

# NAVAL POSTGRADUATE SCHOOL

## Monterey, California



## THESIS

**HOW WAIVERS TO THE TRUTH IN NEGOTIATIONS  
ACT MAY IMPROVE NAVAL AVIATION ACQUISITION  
PROCESSES**

by

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December 1998

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The Truth in Negotiations Act (TINA) requires that Government contractors provide cost or pricing data for procurements equal to or exceeding \$500,000 and certify that such data are accurate, current and complete upon agreement of a contract's price. However, preparation, provision and examination of these data are tedious, time-consuming and costly for the contractor and the Government. The objective of this research was to determine how Department of Defense experience with TINA Waivers could be used to improve Naval Aviation acquisition processes. The thesis examines acquisitions made by three aviation procurement organizations using these waivers. The methodology included gathering waiver-related information to assess the overall use, policy and guidance, methodologies, effects and the opinions related to waivers. The findings illustrate that waivers can offer considerable benefits of time and cost savings. However, barriers exist precluding them from regular use. These include approval limitations, a lack of waiver guidance and a limited diversity of waiver use. From these findings, recommendations are made to remove restrictive waiver policies and procedures, reduce the level of approval authority for waivers, increase waiver guidance and approve blanket or class waivers.

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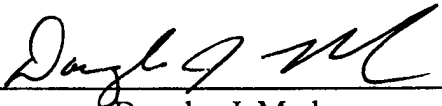
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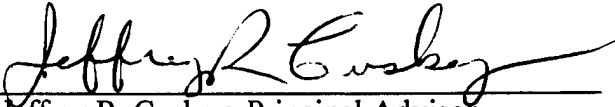
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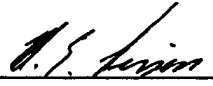
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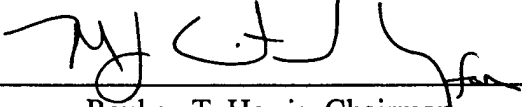
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## **ABSTRACT**

The Truth in Negotiations Act (TINA) requires that Government contractors provide cost or pricing data for procurements equal to or exceeding \$500,000 and certify that such data are accurate, current and complete upon agreement of a contract's price. However, preparation, provision and examination of these data are tedious, time-consuming and costly for the contractor and the Government. The objective of this research was to determine how Department of Defense experience with TINA Waivers could be used to improve Naval Aviation acquisition processes. The thesis examines acquisitions made by three aviation procurement organizations using these waivers. The methodology included gathering waiver-related information to assess the overall use, policy and guidance, methodologies, effects and the opinions related to waivers. The findings illustrate that waivers can offer considerable benefits of time and cost savings. However, barriers exist precluding them from regular use. These include approval limitations, a lack of waiver guidance and a limited diversity of waiver use. From these findings, recommendations are made to remove restrictive waiver policies and procedures, reduce the level of approval authority for waivers, increase waiver guidance and approve blanket or class waivers.



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# **I. INTRODUCTION**

## **A. BACKGROUND**

During the past several years, the Department of Defense (DOD) has begun to transition from using a rigid, cumbersome acquisition framework to one that is allowing more flexibility and individual initiative. A decreased defense budget, tough industry scrutiny on methods of Government contracting and a realization of the benefits inherent in commercial type practices are some of the driving forces for this change. The watchword of the day is "Acquisition Reform".

With reform comes the necessity for acquisition personnel to change their methods, methodology and tools for conducting procurements. Current policy and guidance no longer reflect exacting steps for formulating a one-size-fits-all purchase. Instead, they provide limits and alternatives that may be used to guide the acquisition professional down myriad paths of success. One reform initiative is the expanded use of waivers in place of costly and time-consuming administrative contracting processes. This study examines the use of waivers to the Truth in

Negotiations Act (TINA) in regard to the requirement for providing certified cost or pricing data.

TINA requires certified cost or pricing data for certain Government procurements equal to, or in excess of, \$500,000. Under certain conditions, contracting officers and program managers may obtain waivers to this requirement. TINA Waivers can provide considerable benefits in the form of both cost and timesaving. Proponents and users of TINA Waivers have demonstrated savings in the millions of dollars in administrative costs and reductions in contract cycle times of up to 75 percent. [Ref. 20:p. 51-52] Improvements of this magnitude dramatically increase the capabilities and flexibility of the acquisition workforce to conduct streamlined procurements. The dilemma that exists is that TINA Waivers do not appear to be used in all procurement scenarios where a potential for use exists. Instead, waiver use appears to be stunted by a lack of knowledge concerning its existence and/or a fear of the risk involved with its use.

## **B. RESEARCH OBJECTIVES**

The objective of this research is to determine how the DOD's experience with TINA waivers may be used to improve Naval Aircraft procurement practices. It is apparent



through a precursory examination of several major defense systems acquisitions that TINA Waivers can provide abundant cost and timesaving. In light of this, the researcher looks at the application of waivers throughout the Services, the opinions of Government and civilian acquisition personnel and the resident policies in the DOD and DON in regard to waivers. An analysis of these areas is used to draw conclusions on what lend themselves to be the best practices for waiver application and mitigating associated waiver risk. These conclusions serve as the foundation for offering objective recommendations for improving the use of TINA Waivers within the DON's aircraft procurement sector. The thesis will then attempt to generalize this knowledge to aviation programs and other procurements in Services DOD wide.

### **C. RESEARCH QUESTIONS**

The thesis research addresses the following research questions.

#### **1. PRIMARY**

How can Department of Defense experience with TINA Waivers be used to improve Naval Aviation acquisition processes?

## 2. SECONDARY

- a) What events precipitated the passage of the TINA and what was Congress's intent in passing the law?
- b) What are the major DOD and Department of the Navy (DON) policies with respect to TINA Cost or Pricing Certifications and Waivers?
- c) What are the advantages and disadvantages associated with TINA Cost and Pricing Certifications?
- d) What are the benefits and risks associated with TINA Waivers?
- e) How have TINA Certification and Waiver processes changed since the passage of the Federal Acquisition Streamlining Act (FASA) of 1994?
- f) What is DOD's experience with TINA Waivers prior to and subsequent to the passage of FASA and, specifically, has FASA had any impact on the number of TINA Waivers sought by Naval Aviation Programs?
- g) What are the current incentives and barriers that promote/hinder the use of TINA Waivers?
- h) What actions might a Program Manager or a Contracting Officer take to eliminate, reduce or mitigate the risks associated with TINA Waivers?
- i) How might the use of TINA Waivers be increased within existing and future Naval Aviation Programs?

- j) How can this knowledge be generalized to non-aviation programs in the Navy and other procurements in DOD Services?

#### **D. SCOPE**

The scope of the thesis is limited to an analysis of the use of TINA Waivers within the Naval Aviation procurement process. Specifically, implementation of TINA Waivers are examined in the Naval Air Systems Command (NAVAIRSYSCOM) and its tenant program offices. Insight is offered into the extent to which TINA Waivers are being used in this activity, the cost and time savings associated with their use and whether potential exists for increased use. The following is reviewed and analyzed in conducting this study:

- Current policy, guidance and professional literature relating to the waiver process.
- Opinion and insight provided by acquisition workforce personnel at different tiers within the NAVAIRSYSCOM.
- Information and wisdom provided by civilian aerospace contractors.
- Data provided by military and civilian contract entities involved in the aircraft procurement process.

## **E. RESEARCH LIMITATIONS AND ASSUMPTIONS**

This study is limited by the fact that there is minimal data formally recorded on the cost and time savings associated with TINA Waivers within NAVAIRSYSCOM. Savings for this study are computed based mainly on other data recorded by NAVAIRSYSCOM that lend themselves to extrapolation and information provided by cognizant NAVAIRSYSCOM staff.

This thesis is written with the assumptions that:

- NAVAIRSYSCOM has a need for information regarding the savings applicable to their use of TINA Waivers.
- There is room for expanding the use of TINA Waivers within the Naval Aviation procurement process.
- Program Managers and Contracting Officers possess a need for guidance that will assist them in mitigating the risks of utilizing TINA Waivers.

## **F. METHODOLOGY**

Analysis of this study is conducted by reviewing data and information obtained from:

- NAVAIRSYSCOM and its tenant program offices.
- Select civilian aerospace contractors.
- Current DOD and DON policy and guidance.
- Professional literature.

The data/information obtained are gathered in the form of personal and phone interviews, and surveys, with DOD and civilian contracting personnel, qualitative and quantitative contractual documents provided by NAVAIRSYSCOM, the United States Army and Air Force's procurement commands and the Defense Contract Audit Agency (DCAA). Reports compiled by the Defense Logistics Studies Information Exchange (DLSIE) and literature resident at the Naval Postgraduate School (Knox) Library, Systems Management Acquisition Library and other DOD and civilian libraries was also used. Using this information, comparisons are made between traditional contracting methods without waivers and procurements that have utilized the waiver process. From these comparisons, attempts are made to quantify the spectrum of time and cost savings afforded by TINA Waivers, identify inherent risks with waiver use and highlight potential policy shortfalls. This information is then used as the basis for recommendations that are made relating to TINA Waivers.

## **G. ORGANIZATION OF THE STUDY**

Chapter II discusses a historical overview perspective of the Truth in Negotiations Act. Specifically, what the contracting practices were prior to TINA, what events

precipitated the TINA and what TINA now requires in the form of cost or pricing certifications.

Chapter III lays out the effects of Acquisition Reform. This chapter discusses the elemental general trends in the Acquisition Reform process, the specifics of the Federal Acquisition Streamlining Act of 1994 and the associated changes made to current DOD/DON policies.

Chapter IV presents data relevant to the use of TINA Waivers within the DOD with a focus on Naval Aviation programs. Data are presented on the extent of TINA Waiver use amongst three aviation procurement commands, current TINA Waiver policy documentation, the methodologies being used for processing waivers, the effects waivers have and the opinions of the acquisition workforce relating to waivers and their implementation. Each segment of data presentation is followed by the researcher's analysis of the data.

Chapter VI summarizes the researcher's intent of the thesis and makes conclusions based on data gathered by the researcher. Additionally, it offers the researcher's recommendations on furthering TINA Waiver use based on the findings of prior chapters. Lastly, it presents areas for further research.

## **II. THE TINA EVOLUTION**

### **A. INTRODUCTION**

The nature of Government contracting is unique compared to that of large commercial business. A host of special rules, regulations and policies, as well as the enormity and variance of its purchases, characterizes it. Its design is influenced by a number of goals. One of the more predominant of these is the procurement of goods and Services with the best interest of the American people in mind. Like any system, it requires continual enhancement and updating to preserve its ability to best meet this goal. Numerous changes seeking to maintain this effort over the last thirty plus years mark Government procurement. This chapter discusses the details of one such change, the Truth in Negotiations Act of 1962, and attempts to familiarize the reader with the specifics of TINA's mandate for cost and pricing data certifications.

## **B. A HISTORICAL PERSPECTIVE PRIOR TO TINA**

### **1. Formal Advertising Procurement**

Prior to the Truth in Negotiations Act and as far back as 1861, formal advertising was the mandatory method of Government contracting. In fact, the first statute that included clear provisions for formal advertising was the Civil Sundry Appropriations Act passed in 1861. [Ref. 23:p. 239] The sealed bidding process (or formal advertising), then and today, involves time consuming administrative actions including:

- A written solicitation for bids inclusive of all pertinent information needed by an offeror to prepare a bid.
- Advertisement of the solicitation to all eligible sources of supply.
- A forum for public bid openings that are announced in the solicitation.
- Award to the bidder whose proposal is most favorable to the Government.

Sealed bidding served as the mandatory method of contracting from 1861 until 1984. Although a sound procurement method, the process was burdensome and inefficient during periods of past national conflict. During these times, contracting actions required streamlined



approaches that allowed procurement in an expeditious fashion.

The need to acquire ammunition and supplies quickly to support the war effort precipitated a need to alter the Federal Procurement policy of open competition, low bid wins, to one that limited competition to those offerors capable of meeting stringent delivery schedules even though they were not the low offerors. [Ref. 12:p. 1-1]

Because of this need, the mandate for sealed bidding was often waived, allowing negotiated procurements to foster aid in the acquisition effort. Major examples of these allowances were embodied in the War Powers Act of 1941, the Armed Services Procurement Act (ASPA) of 1947 and Federal Property and Administrative Services Act (FPASA) of 1949. The later of the two required sealed bidding as the primary means of contracting but allowed negotiated procurements under a series of exceptions. [Ref 23:p. 239-240]

## **2. Negotiated Procurements; Pre 1962**

Major differences exist between the negotiated procurement process used prior to TINA and that used widely today. Unlike current practices where discussions are held with all offerors in a competitive range, negotiations in the past consisted of a unilateral decision making process.

During this period, proposals received in response to a solicitation were evaluated in one step for both source selection and negotiation purposes; the source selection decision would be made on the basis of an internal evaluation prior to the initiation of negotiation. [Ref. 23:p. 268]

Conducting procurements in this fashion resulted in contractors being selected without affording consideration to all applicable procurement factors. Furthermore, it permitted the exclusion of offerors, other than those selected as contract awardees, from negotiation discussions. In general, the entire process was void of regulatory guidance and structure. As a result, it facilitated a quick means of getting items on contract but left the Government in a relegated position. Offerors were slighted in that they were not given the opportunity to amend their proposals within the scope of the solicitation and offer the Government a better procurement. This totally excluded the concept of best and final offers. As a result, the negotiation process served no benefit other than to furnish the Government with clarification on the things that could be provided by a selected offeror. [Ref. 23:p. 268]

By 1951, the use of negotiated procurements was on the rise as a result of the Korean Conflict. With an increase in such, the U.S. Congress soon implemented what could be

considered a monumental step in protecting the interests of the sovereign.

It provided that all negotiated contracts should include a clause giving the Comptroller General access to any directly pertinent books and records of the contractor or any subcontractors engaged in the performance of such contracts or subcontracts. [Ref. 14:p. 1]

This change was effected in a modification to the Armed Services Procurement Act of 1951 and set the stage for a precipitation of events that eventually led to the TINA.

Subsequent to this change, negotiated procurements continued escalating in number, while the Congress grew more concerned than ever over the well being of the Government relating to such contracts. By 1956, a series of investigations was initiated led by the GAO. During these investigations, numerous Government contractors' books and records were examined. The examinations exposed numerous cases that reflected gross overpricing of negotiated contracts. The underlying cause of this was deemed to be contractors over-estimating contract costs or, not considering current cost occurrences during periods of negotiation. [Ref. 14:p. 2]

The first effort to counter this problem was taken by the Air Force in 1958 when they adopted a requirement to

have a contractor provide certified cost data under certain conditions. Later in 1959, a Service-wide modification was made to the Armed Services Procurement Regulation (ASPR). This modification mandated certifications for procurements that exceeded \$100,000 in price where the negotiated price was primarily founded on contractors' cost estimates rather than on adequate price competition, established catalog or market prices or prices set by law or regulation. [Ref. 14:p. 3]

This regulation required that "in the absence of effective price competition, the Government's negotiating team must be in possession of current, complete and accurate cost or pricing data before decisions were made on contract prices." [Ref. 14:p. 2-3]

At the time of this change, further Congressional worry arose over excessive profit levels in incentive type contracts. This concern was fostered largely due to the encroaching expiration of the Renegotiations Act of 1951; an Act that allowed the Government remedy over such problems. This concern was put to rest by extending the Act until June of 1962. However, efforts to examine the problem continued. As a result of hearings held by the House and Senate Armed Services Committees in 1962, the problem of excessive profits was formally addressed. The hearing outcomes

referenced the fact that as contractors overstated cost estimates in incentive type contracts they commensurately increased profit levels. Without knowledge of actual costs, the Government was left at a distinct disadvantage during negotiations and could do nothing to prevent the overstatement of costs. Proposals to solve this problem included contract provisions restricting incentive profits to those cases where profit could be traced to a saving directly associated with contractor performance. [Ref. 14:p. 3-5]

**a) *Legislation; The House v. The Senate***

In response to these recommendations the House Armed Services Committee drafted a new bill in May of 1960 known as H.R. 12572. H.R. 12572 applied only to incentive contract arrangements and required two things:

- That certified cost data be provided in all procurements exceeding \$100,000 according to the 1959 ASPR change described in paragraph B.2. above.
- That such contracts include a clause requiring a price reduction in the event that a contract audit unveiled an overstatement of cost or price as a result of inaccurate, incomplete or non-current data. [Ref. 14:p. 5]

The House passed H.R. 12572 in June of 1960. Shortly thereafter, the Senate met on the identical issue.

Unlike the House, the Senate believed that such problems could be rectified "administratively." [Ref. 14:p. 5] Their recommendation was to revise the ASPR to include identical features of H.R. 12572 minus a requirement for auditing the data. This disconnect between the House and Senate left H.R. 12572 idle while the regulatory changes were incorporated into the ASPR instead in January of 1961. One difference existed between the recommended changes and those implemented. This difference was the inclusion of language focusing the change on all negotiated, fixed-price contracts. This change was placed in the 1961 revision at the request of the DOD. [Ref. 14:p. 5]

### **C. THE BIRTH OF TINA**

Changes to the ASPR remained effective from January through February of 1961. In March, Congressman Herbert revived H.R. 12572 under a new title, H.R. 5533. The bill was met with contention however, as members of the DOD felt that legislation was unnecessary in light of the ASPR changes. Minority members in the House also echoed these sentiments. Congressman Herbert's defense of the bill, simply stated, noted that there was a general service trend of non-enforcement of the regulation requiring contractors to provide certified cost data. Realizing the gravity of

this situation, the House voted and passed H.R. 5533 on June 7, 1962. [Ref 14:p. 5-6]

From this point the bill was forwarded to the Senate for review. The Senate approved the bill on August 10, 1962 with one major alteration. Because the original proposal did not render coverage for other than incentive type contracts, the Senate extended coverage to all negotiated procurements. Their concern was that contractors might decide to move away from incentive arrangements and therefore shift current problems from one contract type to the next. The General Accounting Office supported this view.

The bill, as amended by the Senate, was established as law on September 10, 1962 and was put into effect on December 1, 1962. In its final form it became known as the "Truth in Negotiations Act," or Public Law 87-653. [Ref. 14;p. 6-7] From this point forward the TINA has been amended on four separate occasions, beginning in 1968, and continuing until 1989.

#### **D. THE TINA MANDATES**

To better comprehend what TINA requires the reader should understand the intent behind TINA.

The TINA was enacted to place the Government negotiator on equal footing with the contractor at negotiations. The legislative intent was to give the Government informational parity with contractors and subcontractors during price negotiations so the Government could avoid excessive prices. [Ref. 12:p. 1-2]

The TINA requirements are embodied in United States Code 10, Section 2306a, the legislative residence of TINA. The guidelines for implementing these requirements are found in the Federal Acquisition Regulation Part 15, Subpart 15.4, Negotiated Procurements. The TINA has two major requirements in regard to negotiated procurements. They are:

- That all Government contractors submit cost and pricing data and certify that such data is current, accurate and complete upon the agreement of a contract's price.
- That a downward adjustment be made to a contract's price, including profit or fee, where determination is made that the price was increased as a result of a contractor submitting defective cost or pricing data and where the Government relied on the data submitted. [Ref. 12:p. 1-1]

The first applies to all acquisitions that equal or exceed a dollar threshold of \$500,000; an increase from \$100,000 prior to December 5, 1990. This requirement must be met in all cases where a plausible TINA exception does not exist. Exceptions to this requirement are discussed later in this chapter. The second requirement exists to indemnify



the Government in cases where a discrepancy resides in the provision of certified cost and pricing data. It also acts as a deterrent to providing such erroneous certified data. [Ref. 12:p. 1-1] [Ref. 5:Part. 15.4]

**a) Certified Cost and Pricing Data**

Two things should be understood to fully understand the requirements of TINA: 1) What certified cost and pricing data are and, 2) When certified data are needed and not needed. Both are easily answered, but often misinterpreted. The 1987 amendments to TINA known as Public Law 99-500 define cost and pricing data as follows:

Cost or pricing data means all information that is verifiable and that, as of the date of the agreement on the price of the contract (or the price of a contract modification), a prudent buyer or seller would reasonably expect to affect price negotiations. Such term does not include information that is judgmental, but does include the factual information from which a judgment is derived. [Ref 11:p. 125]

Within this context, *certified* cost and pricing data are different from cost and pricing data. Certification requires a contractor to certify that data are current, accurate and complete as outlined in FAR Part 15.403-4. Certification is required under the following circumstances:

- When contract actions are greater than \$500,000 and a specific exemption does not apply.

- When contract actions are greater than \$100,000 but less than or equal to \$500,000 and the contracting officer (CO) determines in writing that the data is necessary and this determination has been approved by the Head of the Contracting Activity (HCA).
- Certified cost and pricing data may not be required for contract actions less than or equal to \$100,000. [Ref. 24:p. 2-6]

#### **b) The Certification Problem**

Both prime contractors and covered subcontractors are required to furnish cost and pricing data certificates. Preparing data for certification and analyzing such data is administratively intensive, costly and time consuming. Large quantities of materials are needed to substantiate data that includes not only historical accounting information but also the following:

- Vendor quotations
- Nonrecurring costs
- Information on changes in production methods and in production or purchasing volume
- Data supporting projections of business prospects and objectives and related operations costs
- Unit-cost trends such as those associated with labor efficiency
- Make-or-buy decisions
- Estimating resources to attain business goals
- Information on management decisions that could have a significant bearing on costs [Ref 24:P. 2-7]

Contractors must often modify their accounting systems to track costs related to Government contracts. Historically, the burdens of providing certified cost and pricing data

result in a lack of desire by contractors for Government business. In March of 1987, a study was conducted by Dr. Dave Lamm entitled, *"An analysis of reasons companies refuse to participate in defense business."* In this study Dr. Lamm cites burdensome paperwork as one of the leading reasons civilian companies refuse DOD business. [Ref. 13:p. 88] In light of this, the focus of this thesis is to facilitate the Government's ability to waive certification requirements when it is in their best interest.

**c) Defective Pricing**

The second major requirement of the TINA affords the Government remedy in cases where contractors fail to adhere to the first requirement. Commensurately, it also provides the contractor with an incentive to provide for proper adherence. Defective pricing is the term used to describe the provision of certified cost or pricing data that are not current, accurate or complete. It is constituted when:

Any price, including profit or fee, for any purchase action covered by the Certificate, is increased by any significant amount because the data were NOT accurate, complete, or current and the Government relied on that data to reach a pricing decision. In such cases the Government is entitled to a price adjustment representative of the amount overpaid, plus interest. [Ref 24:p. 2-23]

As alluded to earlier, defective pricing is the leading reason for the Government's enactment of the TINA. There are myriad cases of defective pricing that exist throughout the history of Government contracting, most of which have reinforced a perceived need for TINA. However, there is also a need to examine those cases where the potential for defective pricing is low, and actions requiring certifications of cost and pricing data should be waived.

**d) TINA Exceptions**

Since the inception of TINA and throughout amendments to the Act, exceptions have been granted allowing the requirement for certified cost and pricing data to be circumvented. IAW FAR Part 15.403-1, there are four such exceptions:

- **Adequate Price Competition.** - Cases where two or more responsible offerors, competing independently, submit priced offers that satisfy the Government's expressed requirement.
- **Prices set by law or regulation.** - Pronouncements in the form of periodic rulings, reviews, or similar actions of a Governmental body, or embodied in the laws, are sufficient to set a price.
- **Commercial items.** Any acquisition for an item that meets the commercial item definition in FAR or, any modification, as defined in the FAR that does not change the item from a commercial item to a noncommercial item.

- **Exceptions.** Waivers to the requirement to provide certified cost and pricing data may be obtained from the head of the contracting activity when other exceptions do not apply. Such waivers must be submitted in writing outlining and justifying the request. Waivers may be sought when the HCA deems it unnecessary to provide such data because price can be determined as fair and reasonable through some other means. For example, when previous certified cost and pricing data has been provided in close proximity to the need for new data, the old data may prove sufficient in determining price reasonableness when supplemented with current information. Once a waiver has been granted the scenario will be treated as if the contractor has been required to provide certified data. This exception will apply to prime contracts where deemed appropriate and will not flow down to the subcontracting level unless similar appropriate exception can be validated. The ability to grant such exception cannot be delegated by the HCA.  
[Ref. 5:Part 15.403-1]

The fourth "exception" offers a malleable approach to apply when the preceding three do not. Caution must be taken in applying this exception however, as it does present a certain level of risk. The ability to waive the certification requirements under this fourth exception is the emphasis of this thesis. The application of this waiver ability is presented in Chapter IV. This chapter examines the policy, approaches and tools used by DOD organizations to facilitate waivers.

#### **e) DOD/Service Level Policy**

As mentioned previously, the primary embodiment of policy and procedure relating to TINA and its exceptions is

contained in the FAR. The FAR provides this at the Federal level. FAR policy is further augmented at the DOD and Service component levels through the Defense Federal Acquisition Regulation Supplement (DFARS), the Army Federal Acquisition Regulation Supplement (AFARS), the Air Force Federal Acquisition Regulation Supplement (AAFARS) and finally, the Naval Acquisition Procedures Supplement (NAPS).

The DFARS implements and supplements current FAR policy and guidance regarding the DOD. It is under authorization and subject to the authority, direction, and control of the Secretary of Defense. [Ref. 5] Information regarding TINA requirements and exceptions are found in DFARS Subpart 215.804. This subpart offers little expansion on that provided by the FAR. Information regarding TINA requirements in the DFARS provides only clarification on those organizations and institutions that have been granted exemption or certain relief from certain aspects of the submission of certified cost or pricing data. Additionally, it provides a format to be used when preparing a request for waiver of such data. [Ref. 5]

The AAFARS, AFARS and NAPS carry the implementation and supplementation of FAR policy down to the Service component level. As with the DFARS, these documents currently offer little expansion on the requirements

mandated by TINA. The AAFARS provides elaboration only on the proper staffing of TINA Waiver requests as well as the information that should be contained in each TINA Waiver request, while the NAPS and AFARS provide no additional policy or guidance at all. Moreover, the recent re-write of FAR Part 15 has resulted in obsolescence of the AFARS FAR Part 15 coverage. The Army has therefore directed deletion of their applicable AFARS Part 15 until formal changes have been made. [Ref. 22]

#### **E. SUMMARY**

The events underlying the enactment of the Truth in Negotiations Act are numerous. The chief goals of the Government in enacting TINA were protecting the monetary interests of the American people while allowing for more streamlined methods of procurement. These goals are illustrated in every major procurement act and amendments to acts and regulations passed from 1941 to present. The Truth in Negotiations Act serves as a medium for placing the Government and the contractor on equal footing while negotiating contracts. It does so by mandating requirements for certified cost and pricing data in certain procurements and affords adjustments to contract prices when costs associated with a contract are misrepresented.

TINA also recognizes the need for providing relief from its requirements when certain procurement scenarios exist. By offering certain exceptions, it offers both the contractor and the Government savings in time, manpower and cost. Government procurement officials must recognize and employ these exceptions in the essence of fairness to the contractor and in the interest of completing efficient and effective procurements.

Exceptions to TINA allow a waiver to be requested in applicable procurements thus offering the DOD with an ability to realize savings when other exceptions do not apply. Cases may exist where this exception and others do not apply however, it is in the best interest of the Government to fully explore the alternative for requesting waivers where applicable. The following chapter discusses whether past and present acquisition reform initiatives give the acquisition workforce the ability to exploit this opportunity.



### **III. THE EFFECTS OF ACQUISITION REFORM**

#### **A. INTRODUCTION**

The world of Government procurement is laden with an exhaustive amount of regulations. Major portions of these regulations are focused on saving the dollars of the taxpayer while ensuring users' needs are met. The DOD procurement community employs some 450,000 people who use in excess of 30,000 pages of regulations issued by 79 different offices. [Ref. 23:p. 19] These regulations, no matter how well suited to protect public interest, are responsible for adding approximately 18 percent to the cost of major weapon systems purchased by the Government. [Ref. 19:p. 4] This added cost stems from the additional requirements that each regulation places on the contractor. For example, between the years of 1984 and 1986 Congress introduced a total of 390 bills focused on improving the defense acquisition process, while at the same time the DOD also instituted its own new directives.

On the current list of regulations the Truth in Negotiations Act is the second most costly. [Ref. 26:p. 1] TINA's requirements necessitate that contractors maintain

their accounting systems based on the cost of every product they sell. Since commercial firms normally do not track costs on a product by product basis, contractors are forced to implement additional cost accounting systems that specifically track Government related costs. The cost information provided by these systems is used by the Government to make determinations on the fairness and reasonableness of the prices offered by each contractor. Whether or not TINA's requirements are a prudent business practice is hard to say. Some argue that TINA does not guarantee an efficient operation and that such regulations are increasing procurement costs with little or no added value. Others favor such requirements seeing them as the only way of protecting taxpayer interests. In either case, initiatives have been taken in the last several years to reduce the burdens of regulations such as TINA while keeping intact the underlying goal of ensuring smart purchasing. This chapter elaborates on some of the events of the Acquisition Reform movement, both past and present. It discusses how certain reforms have increased potential for the use of TINA Waivers and what currently impedes the reform process.

## **B. REFORM EVENTS**

### **1. Past Reform**

The foundations of acquisition reform are not new. Acts of reform began to take place as early as 1808 when the Congress passed the provision entitled "Officials Not to Benefit"; a provision that arose out of a need to prevent growing corruption in the acquisition process by Government Officials abusing their power. [Ref. 10:p. 13] From 1808 forward, reform initiatives became commonplace in a host of areas relating to defense acquisition; there was no shortage of effort to balance or improve the way Government acquires goods and services.

A look back through the lineage of acquisition reform shows numerous studies that worked to shape and improve the procurement process. These studies carry common names and are widely recognized within the acquisition workforce. They include:

- The Hoover Commissions (1949 and 1955)
- The Fitzhugh Commission (1970)
- The 1972 Commission on Government Procurement
- The Carlucci Initiatives (1981)
- The Grace Commission (1983)
- The Packard Commission (1986)

- DMR '89 (The Rittenhouse Report)
- Studies of the Defense Science Board (1983, 86, 87, 89 and 91)
- The Section 800 Panel (1993)
- The National Performance Review (1993) [Ref. 1:p. 1-3]

The aforementioned studies and commissions were not all directly related to defense procurement, but each made recommendations to refine the Government's acquisition system. The Defense Science Board, convened in 1991, determined that each of the commissions and studies preceding it proposed similar recommendations for *streamlining* acquisition. They also concluded that in spite of the myriad streamlining recommendations made by their predecessors, the trend within the acquisition community was one of a lengthening procurement cycle. As was further noted by the 1991 board, the key driver of this trend was incomplete implementation of the recommendations made by prior reform groups. Compounding this was the fact that each reform initiative added even more complex and confining regulations than preceding initiatives. The combination of these two situations prevented reform from ever being fully realized. [Ref. 10:p. 14] The 1991 board's conclusion was that in order for acquisition reform to effect lasting change, a "holistic" approach needed to be taken. The

Section 800 Panel further supported this conclusion in 1993.

[Ref. 1:p. 1-4]

## **2. Current Reform**

In contrast to reform initiatives of the past, current acquisition reform efforts seem to be taking much better hold. The newest reform attempts deviate dramatically from the old by removing cumbersome regulations and replacing them with "guiding principles". These guiding principles promote and encourage creative thinking and flexibility. Mr. Derek Vander Schaff, retired deputy Department of Defense Inspector General, cited his impression of current acquisition reform initiatives as follows:

DOD has either been trying or having someone else try to reform the acquisition process for as long as I can remember. This time there appears to be some real progress....[the Deputy Under Secretary of Defense for Acquisition Reform and staff] have advanced the acquisition reform ball further in the last two and a half years than it has been advanced in the last 20 years by all kinds of special commissions. [Ref. 16:p. 5]

Present acquisition reform can be recognized as beginning with the inception of the Section 800 Panel. This Panel was instituted by the Fiscal Year 1991 National Defense Authorization Act and was tasked with responding to the public's desire for a return on their investment of downsizing and re-engineering efforts in the military. The

panel examined and recommended changes to statutory code that would remove resident inefficiencies. [Ref. 1:p. 2-2] The Panel presented its work to Congress in 1993 in the form of an 1800 page report. The report became the source from which Congress launched numerous reform initiatives. During the course of the Section 800 panel's work, members reviewed over 600 statutes, recommending the repeal or amendment of nearly 300. "In short, they found a jungle of conflicting, obsolete, and ineffective laws which stifled the Federal acquisition process and wasted the taxpayers' funds in huge amounts." [Ref. 28:p. 1] The work of the panel and its recommendations to Congress served as the foundation for implementation of one of the most widely recognized reform acts in force today, The Federal Acquisition Streamlining Act (FASA) of 1994. FASA is discussed in more detail later in this chapter and has a significant bearing on the requirements of TINA.

In close proximity to the work of the Section 800 panel, Vice President Gore launched another major reform initiative in 1993. Gore introduced a national agenda of re-inventing Government entitled the National Performance Review (NPR). The NPR consisted of a team of people with knowledge in organizational change and experience in industry and the Department of Defense. The NPR focus is a

commitment to change in the DOD that will enhance the Government's procurement processes. The NPR is a forerunner in the advance of acquisition reform initiatives and provided great impetus to enact FASA. [Ref. 1:p. 2-3]

Upon assuming the reigns as Secretary of Defense in February 1994, Dr. William J. Perry assumed direction of the NPR initiative in the DOD. In concert with the NPR focus, Secretary Perry issued his DOD Acquisition reform vision on February 9, 1994. This vision was published in a document entitled *Acquisition Reform-A Mandate for Change*. This document continues to serve as the guidepost for DOD reform initiatives. [Ref. 1:p. 2-3][Ref.17]

Dr. Perry's first action upon assuming office was to restructure the OSD staff and establish a Deputy Under Secretary of Defense for Acquisition Reform. Control of this office was given to Colleen Preston who was tasked with developing and implementing a coherent and practical step-by-step plan for reengineering each segment of the acquisition system. Moreover, the office is also responsible for ensuring implementation and institutionalization of all approved Acquisition Reform changes.

The next section, while not a reform initiative, provides insight into a reform imperative, cultural change.

The issue of cultural change is a front-runner in the line of current stumbling blocks to acquisition reform and must be understood to effectively institute lasting change.

### **C. CULTURE CHANGE**

Changing the culture of the acquisition workforce is vital to the smooth transition and success of the reform movement. Prior to the current acquisition reform movement, contracting officers have relied heavily on legislation as the "guidebook" for conducting business. Throughout this period legislation addressed every procurement problem that surfaced, creating a paradigm that left no room for creativity in the procurement process. Acquisition was conducted "strictly by the book". Under this paradigm performance appraisals of the acquisition workforce were largely based on how well they followed the rules. Thinking creatively or "outside the box" were negative performance characteristics frowned on by senior management. In contrast, recent acquisition reform legislation is aimed at shifting this paradigm and incentivizing personnel to become problem solvers and thinkers. Although easy in theory, institutionalizing this cultural change has been difficult. Several prominent acquisition officials have described the impediments.



In a June 1997 interview in Armed Forces Journal Dr. Paul Kaminski, then Under Secretary of Defense (Acquisition and Technology), compared the implementation of acquisition reform to an hourglass. Kaminski said those in the top of the echelon want reform and those at the working level want reform. However, constriction blocks the process in the middle, just as sand flowing through an hourglass slows to a trickle. [Ref. 3:p. 14]

An interview with Deputy Under Secretary of Defense for Acquisition Reform, Colleen A. Preston, revealed her thoughts on the process. "The most unavoidable challenge facing acquisition reform is going through the needed cultural change." [Ref. 3:p. 14] Finally, in the *Death of Common Sense*, a book written by Phillip K. Howard, he makes the observation that:

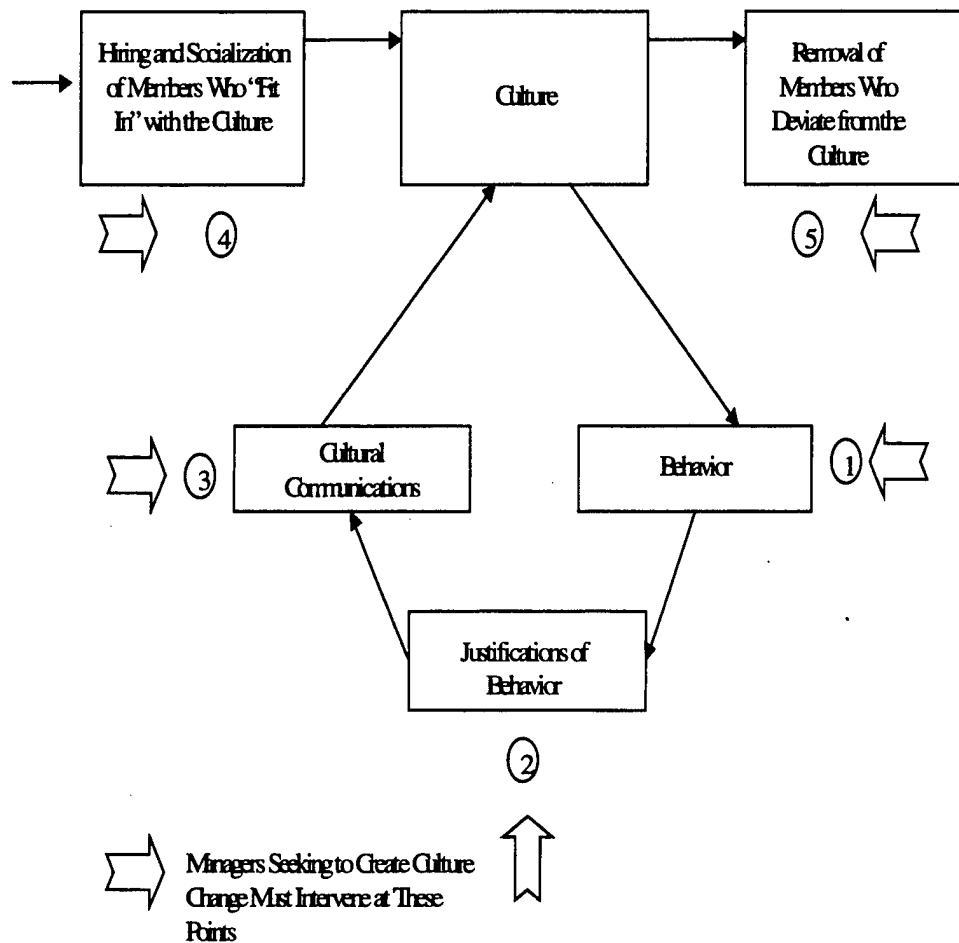
Our regulatory system has become an instruction manual. Detailed rule after detailed rule addressing every eventuality, or at least every situation lawmakers and bureaucrats can think of." [Ref. 3:p. 15]

This resistance to change indicates a need for continued support of Acquisition Reform by the DOD's leadership. The new wave of thinking must be internalized in order for bona fide changes to occur.

Culture change within the DOD encompasses changing a corporate culture. The term "culture change" is used frequently by members of the DOD procurement community but

not often in practice. According to Dr. Vijay Sathe, a Professor of Organizational Behavior, there is no "one unanimously accepted definition" of culture. [Ref. 21;p. 329] When discussing corporate culture, Sathe uses two preferred views of culture referred to as "what is directly observable about the members of community--that is, their patterns of behavior, speech, and use of material objects", and "what is shared in the community members' minds". [Ref. 21:p. 329] Sathe advocates that in order to produce a culture change; managers must comprehend and actively influence things in each of the basic processes that cause a culture to perpetuate itself. His model of perpetuating culture, found in Figure 1 below, illustrates these processes. The numerical values in the model show where a manager must intervene in order to bring about change. Most important to note is that intervention must take place at each of these points vice only one. Without intervention in multiple areas a change cannot be realized.

Once management begins to understand the intricacies of effecting cultural change and makes a strong and clear commitment to it, the realities of change will take place. Adding to the concepts behind changing culture the General Accounting Office conducted a study in 1992 that included obtaining views from experts in the private sector on the



**Figure 1.** How Culture Perpetuates Itself  
[Ref. 21:p. 337].

techniques used to change an "organizational culture". According to these sources (one of which being Sathe), two techniques are considered to be *most important* in making a

successful culture change: *top management support and training*. When these two are combined and used in concert with techniques such as those found in the above model, a cultural change can be effected. [Ref. 27:p. 1-8] Changes in policy and regulation do not by themselves create the change sought by acquisition reform.

To make a lasting contribution to the procurement system, Government officials need to understand that cultural change is more than just changing the rulebook. With this in mind, the next section will offer insight into a specific acquisition reform that has had a profound impact on the acquisition process. This reform, known as FASA, brings with it a need for cultural change.

#### **D. FEDERAL ACQUISITION STREAMLINING ACT OF 1994**

The first significant action of the current acquisition reform movement was the passage of the Federal Acquisition Streamlining Act (FASA) of 1994. This Act initiated several changes to acquisition regulations and had a penetrating impact on the Government's ability to seek relief from TINA cost and pricing data submittal requirements.

Based largely on Section 800 Panel recommendations, FASA revised more than 225 statutory rules affecting defense acquisition.

In a nutshell, it [FASA] encourages agencies to rely on commercial, off-the-shelf products instead of those designed to Government unique specifications and simplifies procedures for buying those items. It also reduces requirements for contractors to submit cost data and exempts purchases below \$2,500 from certain procurement requirements. In addition, the law establishes a simplified acquisition threshold of \$100,000, waives certain laws for procurement pilot programs and makes more contracts accessible to small and disadvantaged businesses. It amends the process for resolving protests and contract disputes, and requires agencies to develop and implement computer network architecture for conducting procurements electronically. [Ref 2:p. 3A]

In regard to TINA's requirement for cost and pricing data provisions, FASA introduced several changes to the Federal Acquisition Regulation (FAR) via Federal Acquisition Circular (FAC) 90-32. [Ref. 6:p. 1] These changes include instituting a new order of priority for pricing information, creating a clear distinction between cost or pricing data and other information and establishing the request for cost or pricing data as a method of last choice. In line with this the FAR now prohibits contracting officers from obtaining cost and pricing data if an exception to TINA applies. In cases where an exception does not apply, it encourages the pursuit of a waiver if price reasonableness can be determined without resorting to cost and pricing data. The reasons for these changes are simple; a reliance on cost or pricing data when unnecessary: (1) increases

proposal preparation costs, (2) extends acquisition cycle times and, (3) wastes the resources of both the contractor and the Government. [Ref. 20:p. 53]

FASA changes the rules but does not alleviate the responsibilities of the contracting officer in determining price reasonableness. Instead, it offers the contracting officer an ability to rely on different, more efficient methods for supporting his analysis of price. The contracting officer now works with an "inverted pyramid", starting from the small and working to the big. The pyramid stipulates three basic levels of information that the contracting officer should pursue. They include:

- No further information from an offeror. This level takes effect when price is based on adequate price competition and does not include provisions in the current FAR Part 15.403-3(b).
- Cost or Price related information. This category or level includes information from both the contractor and other sources that do not meet the definition of cost or pricing data at FAR 15.401. It includes other than "certified" data.
- Cost or Pricing Data. This level includes cost or pricing data that require certification in accordance with the current FAR Part 15.406-2. [Ref. 5:Subpart 15.4]

By mandating the pursuit of information in this order, FASA gives the contracting officer the flexibility of determining price reasonableness through less costly and

more innovative means than advocated prior to its arrival. Providing certified cost and pricing data is no longer the default as in past acquisition practices. The Government acquisition community now has the ability to be *creatively smart* and cost effective where it used to be *strictly safe and rule bound*. This new order of priority does not negate scenarios requiring the merits of certified cost and pricing data but instead reduces the instances where it should be needed. It also does not reduce the risk involved with not requesting certified data. Risk is an inherent part of the decision process. However, in light of the reform goal of streamlining procurements, the contracting officer must now learn to shift his focus from risk avoidance to risk management. The new rules invoke a need to have a common awareness of the availability of other avenues that provide the contracting officer, the contractor and the public with substantial benefits. The benefits that arise out of the new rules equate to cost savings, increased productivity, better partnering relationships and reduced acquisition cycle times.

The movement from rule bound decision making to creative thinking requires a wholesale change to the acquisition corporate culture. This culture change is and continues to be a rough obstacle to overcome. The next

section presents an overview of the overarching policy changes to the FAR that serve to foster this culture change.

#### **E. FAR GUIDING PRINCIPLES**

As the current wave of acquisition reform attempts to push forth an aura of flexible and innovative thinking, the Federal Acquisition Regulation serves to foster such. Unlike previous versions of the FAR, the new re-written version includes an overarching statement of guiding principles that stands to facilitate the Acquisition Reform. Within the statement of guiding principles the *vision* of the Federal Acquisition System is:

To deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives. Participants in the acquisition process should work together as a team and should be empowered to make decisions within their area of responsibility. [Ref. 5:p. 1-1]

In order to pursue this vision the guiding principles lay out methodologies in succinct form for accomplishing this goal. They are:

- Satisfying the customer in terms of cost, quality, and timeliness of the delivered product or service.
- Minimizing administrative operating costs.



- Conducting business with integrity, fairness and openness and;
- Fulfilling public policy objectives. [Ref. 5:p. 1-1]

The framework of the guiding principles illustrates a commitment by the Government's policy makers to allow members of the acquisition workforce to be creative. As mentioned in the vision statement, the workforce should be "empowered to make decisions within their area of responsibility". Empowerment facilitates one's ability to be creative by removing the burden of approval by management that often stifles one's creativity. As stated by Colleen Preston:

I think the most critical aspect of what we've done during my tenure here is ... the notion that we have to empower the workforce. In some cases we have been successful unless people believe that they can change the process within which they work. [Ref. 18:p. 29]

The guiding principles further the commitment to empowerment and creativity by promulgating guidance to pursue actions that are in the best interest of the Government but which are not specifically addressed in FAR, or prohibited by law. [Ref. 5:p. 1-2] These changes to the FAR serve as a foundation for cultural change within the acquisition workforce. It is imperative that leadership at

all levels within the Government know, understand and embrace these principles. A lack of internalizing this guidance will only keep procurement on the path of the status quo.

## **F. SUMMARY**

Acquisition reform initiatives have been in place throughout many years of the DOD's procurement history. However, it was not until the current reform movement began in 1993 that reform initiatives began to make bona fide improvements to the way the Government procures its goods and services. Although current reforms have taken a much better hold than those of the past have, a cultural change will need to take place within the acquisition workforce if reform is to continue to perpetuate itself. Reform initiatives such as the Federal Acquisition Streamlining Act and its commensurate changes to the FAR illustrate efforts that allow creative and less cumbersome practices to take place, such as TINA Waivers, but a commitment will be required on the part of the DOD's leadership to make them profound. The next chapter presents information and data gathered to show how such reforms have effected the use of TINA Waivers within the DOD community.

## **IV. DATA PRESENTATION AND ANALYSIS**

### **A. INTRODUCTION**

The purpose of this chapter is two-fold. First, it presents a summary of the data collection. Second, it provides an analysis of the data with a focus on answering the research questions in Chapter I.

The data in this chapter were obtained through several media. Written surveys and onsite interviews gathered the major portion of the data. The remaining portion was collected in hard copy document form and through phone interviews with members of the DOD acquisition workforce throughout various service commands. Lastly, a literary review of books, periodicals and information on the world wide web was used as a supplement.

Two different surveys provide the basis for information collection. The first survey focuses on extracting TINA Waiver experiences of Procuring Contracting Officers (PCOs), Contract Specialists and Program Executive Officers (PEOs) at the Naval Air Systems Command. These surveys were distributed concurrently with onsite interviews. Interviews facilitated the assimilation of survey information. The

second survey is similar in nature, but focuses on gathering TINA Waiver information from a select group of defense aerospace contractors. This latter survey does not include the use of onsite interviews. Each of the two surveys incorporates the use of qualitative analysis as opposed to a quantitative approach. This research is concerned more with describing concerns surrounding the utilization of TINA Waivers vice quantitative aspects of their use. Where survey data lend themselves to quantitative presentation, such an approach is used to facilitate data presentation and analysis.

The remainder of the data are in the form of active policy and guidance documentation, formal waiver requests, historical procurement and analysis records, the DOD workforce's personal experiences and literature reviews. These data are beneficial in supplementing and providing a base of comparative information in regard to the data collected by survey.

## **B. RESEARCH LIMITATIONS**

During the process of gathering data the researcher discovered the following limitations:

- Not all survey respondents provided completed surveys. The response rate was 83 percent. In some

cases certain respondents did not answer all questions contained in the survey, in others no survey was answered at all. Certain segments of the examined population are therefore unspoken regarding different aspects of TINA Waivers.

- In some cases, DOD organizations had undergone restructuring and consolidation. In one of these instances, contracting personnel left their positions at the procurement organization and TINA related record archives were not carried forward. Therefore, some of the information collected during this thesis is based on respondents' personal recollections vice verifiable records.
- Some personnel were unavailable for questioning during periods of data accumulation. Many of these personnel were the sole proprietors of certain TINA Waivers executed at their command. This leads to instances where a waiver was processed, but no details of the waiver beyond information exacted from existing waiver documentation could be drawn.

Each limitation causes a certain degree of disjointedness in the data. In these instances, the researcher either extrapolated from known data or excluded segments of the data.

### **C. SURVEY METHODOLOGY**

The Naval Air Systems Command (NAVAIRSYSCOM) served as the base population of study for this thesis. The research focused on improving the Naval Aviation acquisition process. In total, 12 interviewees from NAVAIRSYSCOM were asked to complete corresponding surveys. Each interviewee processed

a TINA Waiver recently or in the past. Six interviews were conducted with current or prior PCOs, five interviews were conducted with current Contract Specialists and one interview was conducted with a PEO. Of these interviews, 83 percent provided written survey responses. The cause of personnel failing to return surveys seems to be related to normal workload constraints.

Remaining surveys were sent to each of five DOD aerospace contractors who produce aviation or missile assets for the U.S. Government. These surveys were directed to the Director of Contracts at each contractor facility. Of these surveys, five of five (100%) contractors responded with two contractors providing two survey responses each.

#### **D. TINA WAIVER USE**

This section presents data obtained in response to survey questions as well as other sources mentioned above. Each portion of data is followed by analysis. Survey responses and other information are summarized quantitatively where practical and subjectively summarized for qualitative and open-ended information. Both types of information are presented in consolidated form throughout the chapter. This offers insight on common topics of inquiry across the whole base of collected information.

Data are presented under five general topic areas: 1) Programs Utilizing TINA Waivers, 2) Procurement Activity Policy and Guidance, 3) Methodologies of Waiver Use, 4) The Effects of Waivers and, 5) Opinions on Waivers. Notice that all information is presented in a non-attributional format. Survey respondents and interviewee requested that their responses remain anonymous. Appendices A and B provide complete copies of the survey questionnaires. Appendix C provides a listing of Government and contractor personnel receiving the surveys.

#### **1. Programs Utilizing TINA Waivers**

To determine whether there is an increasing trend in the use of TINA Waivers within DOD aviation procurements the researcher collected input from three major service commands: the Naval Air Systems Command (NAVAIRSYSCOM), the Aviation Systems Command (ASC) and the Aviation and Missile Command (AMCOM). Each source represents a major aviation procurement center for its respective Service, procuring aircraft, cruise and tactical missiles. For the purpose of this study both aircraft and missiles are considered "aviation assets".

Two pieces of data were requested from each command: (1) the number of contractual awards that had been processed between fiscal years 1993 and 1998 requiring certified cost

and pricing data and (2) the number of contractual actions which waived the requirement for certified cost or pricing data for the same time period.

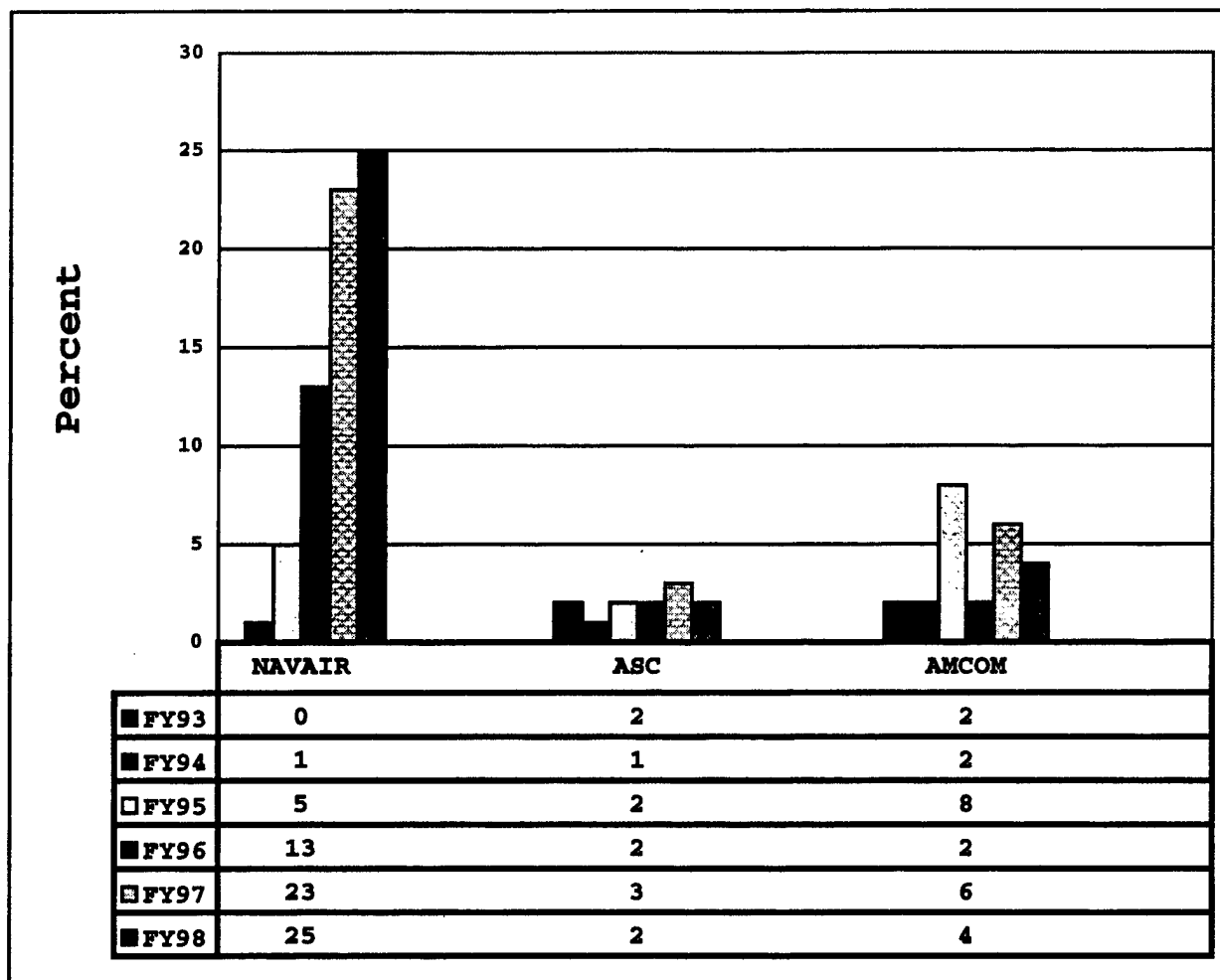
Figure 2 graphically illustrates the percentage of TINA Waivers that were successfully processed by each organization from Fiscal Year 1993 to Fiscal Year 1998. Percentages are based on a ratio of waivers processed to contractual awards requiring certified cost or pricing data per fiscal year. This information was obtained by querying historical DD Form 350 information maintained by each command. Queries were submitted using basic, noncompetitive contract awards greater than, or equal to, \$500,000 as the main parameter of search and include Basic Ordering Agreements (BOA) at the same dollar value.

The data illustrate that the percentage of TINA Waivers executed increased dramatically from Fiscal Year 1993 to 1998 at the NAVAIRSYSCOM. However, little change was noted at ASC and AMCOM levels fluctuate around 5 percent.

To gain an industry perspective on TINA Waiver use, the researcher solicited input from defense contractors. The following survey questions were used to do so.

**Question.** In the face of Government Acquisition Reform, specifically, the Federal Acquisition Streamlining Act of 1994, have you seen the Government contracting





**Figure 2.** TINA Waivers Processed Illustrated as a Percentage of Non-Competitive Contract Awards  $\geq$  \$500,000.  
[Source: Developed by Researcher]

Activities you do business with being more proactive towards the use of TINA Waivers?

**[83.3% Responded NO] [16.7% Responded YES]**

Of those contractors responding no, each provided a similar explanation stating that PCOs are reluctant to request waivers and therefore resort to requiring certified

cost and pricing data for most contract proposals. In comparison, the percentages of TINA Waivers used amongst the Services seem to support this response. Although there is an increasing trend of waiver use within NAVAIRSYSCOM, no such continual upward trend is present at either of the other two commands. In light of this, the researcher assumes that the implementation of FASA affected the use of waivers in some positive form, but neglected to create an overwhelming and sustained impact across all Service aviation procurement commands. When considering the surveyed voice of the aerospace industry it appears that there is avoidance on the part of many Government contracting officials to seek waivers. Explanations for this can take on many presumptions. When exploring answers the researcher made an assumption based on the commonality of responses that stated, "PCOs were reluctant". The assumption was that there is potential in certain cases for exploring the use of a waiver but, certain PCOs will not explore this potential. Based on this assumption, the researcher draws the conclusion that these PCOs either deemed the alternative of a waiver too risky or felt largely unsure of requesting a waiver. Either of these two may stem from a combination of things. However, the researcher hypothesizes that a lack of TINA Waiver guidance and a

cultural tendency toward the safety net of certified data are to blame. If such impediments are to blame, remedy can be brought forth in the form of expanded guidance to PCOs on the use of TINA Waivers. Such a remedy can also incorporate increases in the efforts of senior leadership to foster cultural receptiveness to the use of waivers and other reform tools.

## 2. Procurement Activity Policies and Guidance

The matrix in Figure 3 below presents the official policy and guidance hierarchy in use at each organization used to govern the execution of TINA Waivers.

	<b>Federal Policy</b>	<b>DOD Level Policy</b>	<b>Service Policy</b>	<b>Command Policy</b>
<b>NAVAIR</b>	FAR	DFARS	(NAPS); NO WAIVER INFO	PPM #170
<b>AMCOM</b>	FAR	DFARS	(AFARS) CURRENTLY OBSOLETE	NONE EXISTS
<b>ASC</b>	FAR	DFARS	AAFARS	NONE EXISTS

**Figure 3.** TINA Policy and Guidance Structure.  
[Source: Developed by Researcher]

Interviews with policy personnel at each command revealed that only NAVAIRSYSOM maintains local TINA Waiver policy or guidance beyond that at the Service level. Appendix C presents a copy of NAVAIRSYSCOM's local policies and procedures document, AIR-2.0 Policy & Procedures Memorandum #170. Examination of each of the documents in

Figure 3 shows that waiver policy remains in line with the FAR's overarching guidance. Each document is positive toward the use of waivers given the ability to accurately determine price and price reasonableness.

The researcher next attempted to identify TINA Waiver guidance existing outside each command's policy hierarchy that is readily available to the workforce. Extensive searches of common acquisition publications and websites were conducted. Only one common reference provides such waiver guidance, Version 2.5 of the Defense Acquisition Deskbook (DAD). This source contains a section dedicated to providing examples of DOD cost or pricing data waivers, as solicited by OUSD (A&T) DP Memo, dated 6 Aug 1997, which were successfully processed. Currently there are eight waiver examples, each containing the following categories of useful information:

- Pricing action for which waivers are granted.
- Type of data required from the offeror.
- Description of how the price is determined to be fair and reasonable.
- Benefits achieved from using a waiver.

In addition to each waiver example, the DAD also provides a list of common questions that PCOs may ask

1. Does approving this waiver make good business sense? Why?
2. What price analysis technique or combination of techniques will the PCO use to determine price reasonableness?
3. Do you know what minimum data you will need to perform the price analysis? Where will you get this data?
4. What additional data is available and may be used to supplement the price analysis?
5. What additional data, not yet available, will the PCO obtain and use for the price analysis?
6. What are the special circumstances of this acquisition? What makes the basis for the request "exceptional?"
7. If the PCO anticipates obtaining data from the offeror is that data part of the minimum required to determine price reasonableness? What assurances from the offeror do you have that they will provide the data?
8. What is the current DCAA defective price risk assessment?
9. If basing price reasonableness on price analysis using recent negotiations for the same or similar item, then has there been any DP findings on that proposal?
10. Have you consulted with DCAA on this TINA waiver request? What issues did they raise? How have they been resolved?
11. Have you consulted with DCMC on this TINA waiver request? What issues did they raise? How have they been resolved?
12. Are there any significant deficiencies with the estimating system? Are savings clauses recommended?
13. Are there any litigations pending that could be impacted by an approved waiver?
14. Does the waiver apply to subcontractors and lower tiers?
15. Should any subcontractors be excluded from the waiver?

**Table 1.** Questions for Considering a TINA Waiver. [Ref. 25]

themselves when considering the use of a waiver. Table 1 presents these questions.

The documents found in Figure 3 present information on TINA Waivers through a strong base of policy and procedure. These documents lack, however, "guidance" in the form of business related considerations to be made when contemplating the use of a waiver. Of exception is the NAVAIRSYSCOM's Policies and Procedures Memorandum. This document provides a well-rounded list of important items to consider before requesting a waiver. Moreover, it provides the user with a list of generic characteristics that should ideally exist in the procurement scenario before a waiver is considered as a smart business decision. In comparison, neither of the other Services provides such a tool. The researcher found the only guidance for TINA Waivers beyond that in the DFARS in the DAD. The DAD presented what appeared to be a good foundation of considerations that could be made by PCOs in order to make sound waiver decisions. The downside to this information was its absence from mandatory policy documents. The implications of this may well exist in the form of fewer waiver requests, as demonstrated by both the data in Figure 2 and the opinions of the aerospace contractors cited earlier.

These findings are disturbing. Although the waiver process is not readily applicable to every procurement scenario, it does present a means of streamlining the acquisition process. With streamlining comes some commensurate benefit(s). However, the PCO faces an impediment when deciding to waive certification of cost and pricing data. The impediment comes in the appearance of the risk associated with such a decision. This risk can be found in the form of being unable to accurately determine price reasonableness for the procurement. The consequence of such an action is the risk of paying a higher price for an item than is necessary. Although the waiver process may never be made entirely void of such risk, commands can provide guidance to assist PCOs in making resourceful waiver decisions and thereby offer them assistance in reducing the risk they will face. The data examined by the researcher identified a lack of such guidance in the different mandatory policy documents now used to make TINA Waiver decisions, as well as no guidance at some lower levels. Although guidance did appear in the common reference of the DAD, it would be logical that more guidance could be promulgated at both higher and lower policy echelons. Offering more guidance and less policy might result in

promoting TINA Waiver efforts, while remaining within the intent of the FAR's Guiding Principles.

The researcher believes that a lack of available guidance at each level stifles the acquisition reform initiative and the use of TINA Waivers. With the acquisition workforce still heavily rooted in a "by the rulebook" mentality, a necessity exists for restructuring the rulebook. Incorporating increasing amounts of guidance into the mandatory documents governing procurement can foster workforce creativity and drive. The FAR's guiding principles provide a foundation for such. Moreover, by using Saythe's model presented in Figure 1, an illustration can be made for increasing guidance. As more guidance becomes the norm, changes in cultural communications may occur. As these communications are changed, cultural change sought by the current acquisition reform effort is facilitated. According to Saythe's model, this would represent changing one of the five inputs which theoretically require adjustment in order to perpetuate a sought after culture.

This section illustrates that little in the way of *formal* guidance vice policy and procedure exists on the use of TINA Waivers. However, one Navy command has instituted waiver implementation guidance at the procurement command



level, therefore making up the shortfall of guidance at higher levels. The researcher surmises that increasing TINA Waiver guidance and reducing redundant policy may augment efforts to change the acquisition culture. As a result, the workforce may more readily contemplate the use of innovative tools such as TINA Waivers and successfully implement them.

### **3. Methodologies of Waiver Use**

One of the key aspects of providing information helpful to promoting the use of TINA Waivers is to determine current and past practices used to successfully implement waivers. Information from PCOs, Contract Specialists and PEOs on procurement attributes and tools that facilitate waiver use expressed such current and past practices. Information in this regard is presented from surveys, interviews and actual copies of waiver requests approved by respective authorities at each procurement command. To offer perspective from each Service, the identical organizations depicted in Section 2 are also discussed here in Section 3. An industry perspective is provided through relevant survey data obtained from defense aerospace contractors. Information in this section is presented under two categories: 1) Procurement Attributes and 2) Analysis Tools. Procurement attributes are those common across successfully implemented waivers. Analysis tools are estimating and other tools

recommended or used by procurement personnel to conduct the price analysis necessary when using a waiver.

**a) Procurement Attributes**

By examining waivers from each service, the researcher discovered several common attributes across each waiver case. The researcher believes that these attributes indicate the suitability of a procurement for using a waiver. Of the attributes found, some are more frequent than others. For presentation purposes, the researcher categorizes the attributes in Figure 4 as more frequently found and less frequently found. The more frequently found attributes appeared in at least 80 percent of the waiver cases examined. The less frequently found attributes may have only surfaced in one particular waiver case but distinguished themselves as being extremely important to determining the use of a waiver in the case in which they were found. In total, 20 waivers serve as the basis for the researcher's findings. Ten of the twenty waivers were executed by the Navy, seven by the Air Force and the remaining three by the Army. Figure 4 presents the attributes found in their respective categories.

Numerous indicators and tools exist for deciding the appropriateness of a TINA Waiver. Figure 4 presents

<b>MORE FREQUENTLY FOUND ATTRIBUTES</b>	
(1)	Stable end item or component configuration.
(2)	Extensive actual cost history (5 or more year's worth).
(3)	Stable contractor base.
(4)	Recent DCAA/DCMC audit on past cost data (within 2 years).
(5)	Previously submitted in house certifications of cost and pricing data (within 2 years).
(6)	Minimal modifications or changes to the item configuration during the procurement using the waiver.
(7)	Minimal or no existence of cases of contractor defective pricing.
(8)	DCMC/DCAA audited contractor-estimating systems with good ratings.
<b>LESS FREQUENTLY FOUND ATTRIBUTES</b>	
(1)	Previous TINA Waivers conducted on procurements that were similar or identical.
(2)	Last production buys of the item.
(3)	Similar procurement conducted by another Service using a TINA Waiver.
(4)	Extensive should cost or similar pricing estimates done by cognizant pricing specialists (e.g. A Joint Cost Estimate Team).

**Figure 4.** TINA Waiver Procurement Attributes.  
[Source: Developed by Researcher]

several key attributes that were found to be common in procurement where a waiver was processed successfully. The first list of more frequently found attributes prevailed in most waiver cases that were examined. These attributes are indicative of assets in their "mature" stages of production. The existence of maturity in a program was found to bring

with it a stable base of characteristics offering an excellent suitability to the use of a waiver. In the initial phases of an asset's lifecycle, numerous growing pains are experienced; modifications are made, contractors and suppliers may be switched, audits have not been conducted and cost history is minimal. These idiosyncrasies make it hard to estimate price due to constant changes. Once these changes stabilize, continuity appears across these areas and the case for a waiver becomes more prudent. While examining waivers the researcher found only two instances where waivers were used on other than mature production assets. These instances involved two distinct Engineering and Manufacturing Development (EMD) efforts. In these cases, early planning for procurement of the end item involved extensive joint cost analysis producibility studies conducted between the contractor and the Government. Each study was conducted similar to that of a should-cost effort. The results of these studies yielded what was considered to be a well-founded determination of asset producibility costs prior to manufacturing efforts. Each cost analysis was facilitated by extensive amounts of cost history for assets that were extremely similar in design to the item being considered for production. This cost history included costs for identical components to those being considered for use

in the EMD effort. This collage of available cost information coupled with extensive analyses provided PCOs with the ability to determine price reasonableness similar to that which could be offered by requiring certified cost and pricing data. These cases were indicative of procurements containing the less frequently found attributes listed in Figure 3. Less commonly found attributes were therefore extracted from waiver cases that were atypical of the mainstream waiver scenarios examined. These particular cases may have contained several of the more commonly found attributes and one or more of the less commonly found attributes as highlights of individuality of the procurement. What was of particular importance to the researcher was the fact that none of the attributes presented herein were highlighted in any of the policy documents listed in Section 2.

In light of the information presented on waiver attributes the researcher believes that the information in Figure 3 presents a good starting point for investigating potential waiver use. However, because certain procurement scenarios present themselves as being "atypical", as in the EMD instances presented above, PCOs may wish to keep other considerations in mind. For example, in the case of the EMD efforts cited, other means of cost estimating were used that

allowed determination of price and price reasonableness without certified cost or pricing data. With this in mind, the possibility for a waiver can not be ruled out simply because none of the attributes cited above are present. Instead, one may search for characteristics that offer opportunities similar to those found during the EMD effort that may facilitate the use of a waiver. The researcher believes that one thing should be kept in mind, however; the ability to accurately determine price reasonableness is an end goal. In many cases, information used to conduct price analysis may not carry merit and may result in inaccurate determinations of price. The age old "Garbage In, Garbage Out" rule therefore appears to apply when making such considerations.

**b) Analysis Tools**

To gain insight into the tools and aids used to ascertain price and price reasonableness, the researcher solicited information on the pricing tools and aids that have been used successfully in past waiver situations. Myriad tools and aids are currently in use for assisting those seeking TINA Waivers. The following list presents tools and aids found during this study:

### **COMMON PRICE ANALYSIS TOOLS/AIDS**

- Audited Actual Cost Data provided in the form of Contractor Cost Data Reports (CCDR).
- Learning Curves.
- Actual and Negotiated Unit Price Trends.
- Unit Price trends from other Programs.
- Trends of Company Profits.
- Trends of Prior Contract Profits.
- Un-priced Affordability Initiatives.
- In Process Findings or Data from Overhead Pricing, Operations Audits, Labor Audits or other Systems Reviews.
- Relevant Information from Contractor Briefings.
- Parametric Estimating Models.
- DCMC/DCAA Audits.
- Joint Price Analyses Teams (Contractor and Government)
- Previous Negotiated Cost Base and Settlement Positions.

This list represents the tools and aids being used in cases of the successful waivers examined; it is by no means exhaustive. Additional tools or aids applicable to conducting price analysis may be the subject of further study. Of worthy mention are the initiatives of NAVAIRSYCOM to institute a Price Based Estimating Envisioning

Laboratory. In concert with the Defense Contract Audit Agency (DCAA), NAVAIRSYCOM is attempting to explore the increased use of price-based estimating tools which can further the use of price-based estimating methodologies in evaluating contract proposals. [Ref. 15] This effort is within its infancy and to date, offered no data for the researcher to present. The researcher does believe however, that the efforts of this laboratory, if successful, may further expand the list of price analysis tools available to PCOs.

As the determination for the applicability of a waiver becomes more positive, users must reflect on the tools available to assess price and price reasonableness. Numerous tools, such as those listed above, exist and are readily in use for price analysis. As stated previously, these analysis tools are not all encompassing. Instead they offer what the researcher considers to be a sound base of tools from which price analysis options may be explored. These tools have been applied across different waiver scenarios with no standards or protocols of use. Different tools were used in different waiver cases and were chosen based upon their suitability to the procurement. In general, those interviewed explore the determination of price reasonableness by combining the functionality of these



analysis tools to make sound determinations. Information not gleaned from one tool was extrapolated from another. In some instances, information from one was used as input for another. In other cases, several tools were used in concert to ascertain price reasonableness and/or to cross check the estimates of another tool. Yet in other cases, multiple tools were applied and the one that displayed the highest degree of correlation was chosen as the one for use. Discussions with cognizant personnel using these tools determined that no one tool is perfect for every waiver scenario. Again, as with the attributes mentioned earlier, no current policy regarding waivers highlights these tools as recommended resources. Therefore, procurement personnel have no real guidance on what tools may be of assistance when ascertaining price reasonableness for a waiver.

In summary, myriad tools exist for determining price reasonableness to facilitate the use of TINA Waivers. The overriding encumbrance is that none of the tools found by the researcher are presented in current policy on the use of waivers. Including guidance on pricing tools in these documents may arm PCOs with the assistance needed to remove their reluctance associated with TINA Waivers.

#### **4. Effects of Waivers**

Waivers have effects on many aspects of the contracting process. This section presents those waiver effects presented via surveys and personnel interviews with Government and contractor representatives. These effects include:

- The benefits and risks of TINA Waivers.
- The incentives and barriers of waiver use.
- The savings generated by waiver use.

Respondents provided feedback on these topic areas based on their experience with previously processed waivers. The information is presented under the following categories: 1) Benefits and Risks, 2) Incentives and Barriers and 3) Savings.

##### **a) Benefits and Risks.**

Both the Government and contractor realize several benefits when using a waiver. Survey data showed that in many instances, the Government and contractor identified identical benefits. Conversely, only the Government expressed a concern for risk when processing a waiver. Defense contractors had no real voice about waiver risk. The list below presents the benefits and risks noted by the

researcher on behalf of the Government and contractor. This information is presented in no particular order.

#### **BENEFITS ASSOCIATED WITH WAIVER USE**

- Reductions in cost, time and effort associated with proposal preparation and negotiations.
- Reductions in cycle times (RFP to Definitization) and (RFP to production).
- More effective use of available personnel.
- Increased capability to work with a reduced workforce.
- Increased ability to accomplish other required work.
- Reductions in Bid and Proposal Costs.
- Reductions in required DCAA/DCMC audits.
- Reductions in contract price and profit levels.
- Improvements in parametric estimating techniques.
- Improvements in overall support capabilities for the Government.
- Improved contractor/customer relations.

#### **RISKS ASSOCIATED WITH WAIVER USE**

##### **(Government Only)**

- Inability to determine a fair and reasonable price based on price analysis alone.
- Asset pricing inconsistencies resulting from improper consideration for item modifications and changes.
- Improper use of estimating techniques and tools.

- Incapacity to remedy cases of "defective pricing".
- Excessive negotiation settlements due to a lack of current cost history.

Evident in the data is the fact that waivers maintain a potential for both positive and negative effects. Positive effects exist in the form of the benefits they can provide, generalized as savings in time and cost. These benefits are critical to the acquisition workforce in an era of declining manpower and funding. Waivers can be viewed as a viable method of generating needed savings in the face of these declines, when and where they can be applied. Of importance is the realization that not all of the potential benefits found by the researcher would be visible in every waiver case. Yet, all survey respondents viewed each benefit they realized as a result of a waiver as being worth the effort expended in its pursuit. In all cases, interviewees strongly preferred the benefits over the costs and time associated with full-blown certified cost proposals. They noted that waivers provided them with an ability to dramatically increase procurement efficiency by facilitating more streamlined acquisitions. The product they boasted of was being able to procure an asset faster, and in many cases cheaper, than without a waiver.

Considering this, the researcher believes that waivers are a definite move in the direction of smart purchasing practices that provide a stage for good relations between Government buyers and commercial sellers.

Although the benefits of waivers appear significant, the risks associated with waivers are just as significant. The risks presented by the interviewees demonstrate those that might be faced by other PCOs who request waivers. Risks are found in several forms and it is the contracting officer's job to manage risk when pursuing a waiver. Risk reduction comes with contracting officers properly assessing and planning for those risks that may come with the use of a waiver. With this in mind, the risks presented here could be minimized by proper assessment and planning. What should be considered is that the potential for eliminating risk in entirety will more than likely never become a reality. PCOs must therefore learn to accept risk, managing it vice avoiding it, in order to ensure limited occurrences of the consequences that it can bring.

**b) Incentives and Barriers**

The following presents incentives and barriers found by the researcher relating to waiver use. Similar to the benefits and risks presented, both the Government and

contractor realize these incentives and barriers. Much the same, this information is presented in no particular order.

#### **INCENTIVES TO WAIVER USE**

- Facilitation of commercial-like practices.
- Improvement of "partnering" relationships.
- Provision of quick support to units.
- Increased workload capacity.
- Quicker funding obligations.
- Improved capability to work within budget constraints.

#### **BARRIERS TO WAIVER USE**

- Reluctance of the workforce to use waivers.
- Bureaucratic staffing constraints.
- Lack of waiver guidance.
- Waiver approval level.
- Risk aversion.
- Cultural mentality.

Of the waiver incentives and barriers discovered by the researcher, one incentive and two barriers stood out as being most significant. Both the Government and the contractor base that were surveyed felt that the greatest incentive to using a waiver was the increased workload capacity that was realized. By eliminating the need for

preparing and analyzing cost and pricing data each party realized more time to pursue other pressing requirements. Each saw this as enhancing their capabilities to perform by reducing the workload to be accomplished with the remaining workforce, especially during times of high operational tempo. In the barrier realm, the Government most strongly emphasized the barrier of bureaucratic staffing constraints and risk aversion as being the two most limiting factors to requesting a waiver. Government personnel felt that too much effort was involved in having to sales pitch waivers up the chain of command. This barrier, coupled with an aversion to risk, set a tendency among personnel to shy away from requesting a waiver vice certified cost or pricing data.

**c) Savings**

Considering the benefits mentioned earlier, attempts were made to quantify the savings that are an integral part of these benefits. The researcher's intent was to present a spectrum of saving levels that gave credence to the scope of savings that can be realized by using a waiver. The savings found in Table 2 below are presented based on actual or estimated figures offered by Government personnel and completed waiver documentation.

Because the savings found differed dramatically from waiver to waiver, the researcher found no real standard applicable to savings. It was therefore hypothesized that institutionalizing waiver savings might be extremely difficult, if not impossible. Instead, the savings presented offer the reader some order of magnitude of the savings that may be realized by using waivers. These savings do not include data from surveyed defense contractors as they provided little relevant data. Table 1 is a breakdown of Government savings noted in each category of respective savings found.

CATEGORY OF SAVINGS	EXAMPLES OF SAVINGS NOTED
(1) Proposal Preparation Time (contractor).	Between 40-75% savings.
(2) Negotiation Time	Up to 75% savings.
(3) Cycle Times	Between 2 and 12 month savings.
(4) DCAA/DCMC Audits	Between 45-60 day savings.
(5) Asset Price	Between 2-14.5% savings.
(6) Bid and Proposal Costs (contractor).	Between \$100-750K saved.

**Table 2.** Noted TINA Waiver Savings.  
[Source: Developed by Researcher]

While a number of barriers exist that hinder increased waiver activity, numerous incentives also exist for increasing waiver use. In order to readily realize the benefits of these incentives, mediums must be found to overcome the barriers. Consideration must be given to the magnitude of waiver savings that are demonstrated in



procurements that have successfully utilized waivers (Table 2). Reflection on these savings shows the positive effect waivers can have throughout the procurement cycle. Moreover these savings represent benefits that DOD organizations must begin to readily experience in the face of declining defense dollars. Forgoing these benefits due to a lack of perseverance to overcome barriers mentioned may further delay the cultural change sought in the acquisition community.

With this in mind, the following section addresses some of the relevant opinions on TINA Waivers offered by DOD and defense contractor personnel. The researcher considered this information to be important as it aids in helping to realize what changes might be made to assist in removing the impediments found to using TINA Waivers.

#### **5. Opinions of the Acquisition Workforce**

To culminate information gathering on TINA Waivers, the opinions of NAVAIRSYSCOM personnel were sought relating to improving the waiver process. Emphasis was given to Navy in this regard as this thesis is focused at improving Naval Aviation procurement. The following survey questions focused on accomplishing this task.

**Question.** What changes in Department of Defense and Department of the Navy policy would you propose, to make the use of waivers more pronounced?

**Question.** What is your perception of the general acquisition workforce's feelings toward the use of TINA Waivers? How do you feel that your command hierarchy views the use of waivers?

Twelve contracting individuals at NAVAIRSYSCOM were surveyed on these questions. Eight of the twelve responded to the questions. The following responses represent answers to these questions synopsisized by the researcher presented in order of the two questions listed. Each response is followed by a percentage of respondents answering similarly.

- Lower the level of approval authority required for a TINA Waiver request. **[87.5%]**
- Lower the level of approval to that authority capable of approving the Business Clearance Memorandum. **[37.5%]**
- Establish dollar thresholds for waiver approval authority. **[12.5%]**
- Provide better guidance on the criteria that should be used for deciding the appropriateness of a waiver. **[12.5%]**
- Determine policy for establishing "blanket" or "class" waivers. **[12.5%]**

- Provide policy guidance for considering other methods of determining price reasonableness besides detailed cost analysis. **[12.5%]**
- The acquisition workforce is positive toward the use of waivers, but their initiative to use them is stifled by high-level approval authority. **[87.5%]**

Responses to these questions indicate an overwhelming trend of discomfort with the level of approval required to obtain a waiver. Interview discussions with personnel at NAVAIRSYSCOM amplified these survey responses. Respondents felt that the requirement to request waiver approval from the Head of the Contracting Activity was much too burdensome in spite of the intent of a waiver. Justification was given that staffing a waiver normally requires a workload that is counterproductive to the reductions in work that are byproducts of a waiver. Interviewees stated that this was further compounded by the frequency of "staffers" entangling themselves in the decisions regarding procurement negotiating positions which are derived by waiver price reasonableness determinations. The general consensus was that staffers are neither intimately familiar with the procurements involving waivers, nor are they well-versed in the outcomes associated with waiver analysis. This action by staffers often resulted in divestiture of a PCO's responsibility and tended to intimidate the PCO from future

waiver use. In certain cases this leads to a potential "bowing out" of a PCO of the attempt to use a waiver and a switch to requesting a full blown cost proposal.

The opinions of PCOs, Contract Specialists and PEOs center on wanting approval for waivers at the level at which the Business Clearance Memorandum (BCM) is approved. In other cases, support was given to waiver approval authority resting at different tiers according to dollar value of procurements. In either case, individuals offering these opinions felt that in light of current acquisition reforms, and the notion of empowering the workforce, that waiver approval authority should lie with those most directly responsible and familiar with each procurement. Consideration of these suggestions seemed plausible to the researcher. BCM authorities maintain control over the dollar thresholds that negotiators (often the PCO) are authorized to engage in during settlement of an asset buy. As this is the case, it was felt that the individual who approved the BCM should also have the authority to approve a TINA Waiver.

Other interesting considerations for improvement were also presented. Two interviewees indicated a desire for the publication of increased waiver guidance. One person recommended the inclusion of waiver guidance to assist in

determining the appropriateness of using a waiver. The other saw a need for guidance that would assist in deciding the appropriate method to be used for conducting price analysis used to determine price reasonableness in a waiver procurement. Each opinion paralleled and supported those findings noted by the researcher during earlier analysis of current waiver policy. Lastly, one respondent addressed a desire for policy authorizing blanket or class waivers. This recommendation included statements that supported the use of such waivers in standard procurement scenarios, such as a mature production buy, where a waiver could be granted with less scrutiny. This involved the procurement having a pre-determined set of characteristics. An example would be a mature production buy of a stable system platform that maintained significant actual cost history, and data, that were previously certified and audited at length. Such blanket waivers would offer an ability to have waiver approval "rubber stamped" avoiding unnecessary briefings to higher command echelons.

In summary, the opinions of current contracting personnel at NAVAIRSYSCOM all support changes to current waiver policy. The opinions articulate a need to provide the acquisition workforce with guidance to make sound waiver decisions while empowering them to make choices for or

against waivers. These opinions support changes sought by current acquisition reform and, if taken for action, may facilitate needed cultural changes. The researcher believes that the provision of guidance, and authority, may serve to remove the tendencies of the acquisition workforce to shy away from TINA Waivers and promote their increased use.

## **E. CONCLUSION**

TINA Waivers are a medium that can reduce acquisition costs and increase procurement efficiency. In light of acquisition reform they demonstrate a movement away from burdensome regulations and toward more commercial-like practices. Although the ability to utilize waivers exists, and proven benefits and incentives for their use have been illustrated, impediments still exist that prevent exploitation of their full potential. Limited policy guidance, hierarchical approval levels and inherent risk all serve as current obstacles in this regard. Removal of these impediments requires continued action by DOD leadership.

The researcher believes that there are cures that will serve to fix these impediments. Changes will need to be addressed at several levels to make this happen. This chapter highlights both the positive and negative characteristics found concerning waivers and serves as the

foundation for the conclusions and recommendations that the researcher draws about TINA Waivers. The next chapter presents the conclusions and recommendations of this study.





## **V. CONCLUSIONS AND RECOMMENDATIONS**

### **A. INTRODUCTION**

The Federal Acquisition System is currently undergoing a series of acquisition reforms that attempt to make wholesale efficiency changes to procurement. These reforms require a cultural change to occur within the acquisition workforce to be fully effective. Residing within the current base of reforms are methods that allow acquisition professionals to circumvent unnecessary statutory mandates that offer no added value in certain procurement scenarios. One such method is use of waivers to the Truth in Negotiations Act's requirement for certified cost and pricing data.

Considering the ability to waive the TINA requirement for certified cost and pricing data, the researcher analyzed aspects relating to the current uses of TINA Waivers in the aviation procurement realm. To accomplish this a focus was given to improving Naval Aviation procurement, using TINA Waiver experiences within the Navy, Air Force and Army, as a base of information and data. Within these Services the researcher examined information and data regarding the

overall use of TINA Waivers, the TINA Waiver policy and guidance used by each Service, the methodologies employed when using waivers, the effects waivers have and the opinions that exist within the acquisition workforce. From an analysis of this information and data, the researcher made the following conclusions and recommendations.

## **B. CONCLUSIONS**

1. Despite the upward trend of TINA Waiver use in Naval Aviation procurement since the passage of FASA, barriers still exist which impede PCOs from more readily requesting waivers.

The aforementioned conclusion is based on the perception of aerospace contractors surveyed in this thesis and those waiver statistics, barriers and risks identified in Chapter IV. Statistics from Fiscal Years 1993 to 1998 demonstrate an increasing trend of waiver use at NAVAIRSYSCOM since the passage of FASA. However, impeding the continued upward momentum of waiver use is reluctance on the part of some PCOs to explore options for TINA Waivers where potential exists. This conclusion is substantiated by the unanimous (100%) agreement of the defense aerospace contractors surveyed. The data on actual waivers instituted do nothing to demonstrate how often waiver considerations

were foregone. The researcher therefore defaults to the voice of the aerospace industry as being valid concerning how proactive DOD personnel are to consider a waiver attempt.

2. TINA Waivers processed by the DOD demonstrate an ability to successfully determine price reasonableness through price versus cost analysis on high dollar, major systems purchases. Moreover, these procurements can in many cases be categorized for price analysis suitability through the use of certain procurement attributes.

Price analysis alone has traditionally only been used to evaluate price reasonableness on low dollar, non-competitive contracts. (Ref. 7:p. 55) Current DOD TINA Waiver cases demonstrate, to the contrary, that price analysis can be successful in determining price reasonableness on contracts of greater magnitude. The success of price analysis in this regard is demonstrated by the potential savings illustrated in Table 2, and endorses the benefits of such analysis. Secondly, the waiver cases examined through this research display a uniform set of attributes that could be used as indicators to determine the suitability of a procurement for price analysis. These findings support an ability to increase price-based

parametric estimating for major systems purchases more effectively in the future.

**3. The level of authority required to approve requests for a TINA Waiver may be too high and require modification.**

Opinions of the acquisition workforce at NAVAIRSYSCOM who have used waivers speak to a need for lowering waiver approval authority. There is a belief that too high a level of approval authority stifles initiative to make a waiver request and creates unnecessary administrative burdens. These are aspects that are contrary to a waiver's intent. The researcher believes in light of acquisition reform that lower levels of management should be able to make the determination for a waiver. Authority levels currently below that of the Head of the Contracting Activity (HCA) hold approval authority for decisions similar to that for a waiver, and should therefore be vested with full authority for waivers within their area of responsibility. Such empowerment would foster attempts to request a waiver by removing several of the barriers outlined in Chapter IV.

**4. Insufficient waiver guidance exists across the spectrum of DOD aviation procurement commands.**

Current policy regarding TINA Waivers is void of guidance that offers a reference for considering the business-related aspects of a TINA Waiver decision, bar

NAVAIRSYSCOM. All current Federal, DOD and Service command policy lacks substantial TINA Waiver guidance which is contradictory to the aim of current acquisition reform. NAVAIRSYSCOM stands out as the only aviation procurement command that has put forth an effort to increase guidance through the implementation of a local Policies and Procedures Memorandum. However, there is a small percentage of personnel at this command that feel more guidance, such as that published in the DAD, could be promulgated. The researcher presents his thoughts on this in Recommendation 4.

**5. There is little diversity among the types of procurement scenarios where TINA Waivers are being applied in aviation related procurements.**

Those examples of TINA Waivers gathered by the researcher illustrate that in most cases, bar two, TINA Waivers are used predominately in mature, follow-on production purchases of an item. The two exceptions noted were cases where waivers were used in engineering and manufacturing development efforts. Although waiver use may be restrictive, the researcher found no information that demonstrated that waivers had been attempted in aviation procurement scenarios other than those mentioned above. This may indicate a further reluctance by the acquisition

workforce to consider waivers in cases other than those having clear indicators for waiver potential. The one example where this paradigm appears to be shifting is in the case of NAVAIRSYSCOM's Price Based Estimating Envisioning Laboratory discussed in Chapter IV.

### **C. RECOMMENDATIONS**

1. Increase TINA Waiver guidance in policy documents residing at the Federal and DOD level while reducing excessively restrictive policies and procedures. Moreover, promote Service procurement commands to do the same at the local level.

Instituting more guidance at these levels would provide benefit to the acquisition workforce in several ways. First, macro level guidance at the Federal and DOD level creates a uniform set of guidelines that can be commonly referenced by all. Second, increasing guidance can enhance the level of comfort PCOs have in requesting a waiver by providing tools to assist in making smart business decisions. Lastly, promoting guidance at the Service procurement command level would facilitate addressing considerations for the idiosyncrasies that pertain to unique purchases made at each command where a waiver might be used.

**2. Reduce the level of oversight required to grant approval on a request for a TINA Waiver.**

Current acquisition reform stresses empowerment of the workforce. Maintaining waiver approval authority at current levels stifles a PCO's initiative to request a waiver and creates unnecessary administrative burdens, defeating the intent of reform. Responsibility for the decision to approve a waiver can rest in the hands of those most directly responsible for making judgments similar in nature to that of a waiver.

**3. Implement policies that would facilitate obtaining waiver requests in procurements that demonstrate certain standard characteristics and attributes.**

All waiver cases examined, excluding two, demonstrated a standard set of attributes and characteristics that indicated suitability for a waiver. These procurement scenarios should be codified and granted approval for waivers with less stringent scrutiny by waiver authorities. Suggestions for this recommendation were also offered by members of NAVAIRSYSCOM who spoke to the use of "blanket" or "class" waivers. Approving waiver requests in this way would expedite the waiver request process by lessening oversight and improving potential savings.

4. In light of the lack of TINA Waiver guidance described in Conclusion 4 above, the researcher recommends that the Office of Federal Procurement Policy (OFPP) consider the TINA Waiver questions presented in Table 1, or derivations of such questions, for inclusion in the FAR to guide PCOs.

Those interviewed for this thesis voiced a need for increased TINA Waiver guidance. The researcher believes based on the aspects of TINA Waivers examined, that the TINA Waiver questions offered in the current version of the DAD (Table 1) may assist those who are considering TINA Waivers. Although the DAD's list of guidance may not be comprehensive, it appears to offer a good starting point for generating formal, standard questions to be asked that could result in controlling the risks involved with waivers. Increasing the quantity of risk planning and analysis tools specific to waivers may impact waiver use by removing the reluctance of PCO's to make waiver decisions.

#### **D. AREAS OF FURTHER RESEARCH**

As a result of the research conducted on TINA Waivers, the following areas warrant further research.

1. Examine more specifically the concept of using price-based proposal preparation as a primary means of



conducting future procurements to assist the NAVAIRSYSCOM Price Based Estimating Envisioning Laboratory.

2. Construct a formal decision model that can be used by PCOs for assessing the potential of a procurement for a TINA Waiver.

3. Research and develop a standardized computer based parametric estimating model to be used in conjunction with TINA Waiver scenarios.

4. Examine further procurement scenarios for potential TINA Waiver use.



## APPENDIX A. NAVAIRSYSCOM SURVEY

### SURVEY QUESTIONNAIRE

**Guiding Information.** Please be unbiased in your answers. Any and all information that can be provided to each question will be of great assistance. Answers need not be limited in length; the more information that can be offered, the better. For sake of ease, survey answers kept in Microsoft Word format will facilitate transmittal and management of survey responses. Inquiries regarding survey questions and return of surveys can be sent to Captain Douglas Mrak at e-mail address ([Dmrak@nps.navy.mil](mailto:Dmrak@nps.navy.mil)). Phone contact of a like nature can be made to #####. Should any respondent wish to mail a survey response, they can be sent to the following address:

Captain Douglas J. Mrak  
Naval Post Graduate School  
2 University Circle - SGC # 1869  
Monterey, CA 93940-1869

1. Which program do you currently support? In what capacity do you serve? How long have you been with this program?

2. Does your program currently use, or has it previously used, a Truth in Negotiations Act Waiver during any portion of the program's lifetime? If so, how often are, or have, these waivers been used?

3. In cases where waivers have been applied, please describe the procurement scenario that facilitated the use of the waiver.

4. In light of question number three, what benefits can you associate with the use of these waivers? If these benefits provided quantifiable savings, please elaborate on the categories of savings and a specific quantity or range of savings.

5. Are TINA Waivers a regular part of the acquisition strategy for your program? If so, in what ways do you plan for the use of waivers throughout the acquisition cycle?
6. If your program has not ever requested a waiver, can you please briefly explain why?
7. What types of procurement scenarios do you see as being readily adaptable to the use of a TINA Waiver currently or, in the future?
8. What changes in Department of Defense and Department of the Navy policy would you propose to make the use of waivers more pronounced?
9. What actual risks have you faced or, do you see as being inherent to the use of a waiver? How do you feel these risks can be mitigated? If risk were identified in conjunction with the use of a waiver, how did your program address/mitigate these risks?
10. What is your perception of the general acquisition workforce's feelings toward the use of TINA Waivers? How do you feel that your command hierarchy views the use of waivers?
11. Have any waivers been requested for your program that have been disapproved by the Head of the Contracting Activity (HCA)? If yes, please elaborate on the circumstances underlying the cause of the disapproval.
12. What is your opinion of the Government Contractor's receptiveness toward TINA Waivers?
13. Have any Government Contractors that are associated with your program made recommendations for waivers that were successfully taken for action?

14. Have any waivers that have been used facilitated the "partnering" relationships between you and the Government Contractor. If so, in what ways?

15. Do you have any other comments you would like to make, either positive or negative, in regards to TINA Waivers or their use?



## APPENDIX B. CONTRACTOR SURVEY

### Truth in Negotiations Act Waivers Survey Questionnaire

**Precursory Information:** Under United States Code, Title 10 (U.S.C 10), commonly known as the Truth in Negotiations Act of 1962, exceptions reside allowing the Government to grant a contractor exception to the requirement for requesting **certified cost and pricing data** for procurements exceeding \$500,000. The fourth of four exceptions permits the use of a waiver in exceptional procurement scenarios where sufficient cost history exists and price and price reasonableness can be determined without the need for certified cost data. These waivers are most often referred to as TINA Waivers. In relation to this exception, this survey is designed to determine your experience with and opinions of such waivers as they pertain to your conduct of business with the Government. **All answers provided to this survey will be non-attributational.** Please be as candid as is possible when providing your responses. The purpose of this survey is to determine objective recommendations for promoting the use of such waivers in the future should they be found to be beneficial.

#### Questions:

1. Has your organization encountered the use of a TINA Waiver, or waivers, while supporting any Government major systems programs? If so, could you offer the name of the program(s) and how often a waiver was granted?
2. In the face of Government Acquisition Reform, specifically, the Federal Acquisition Streamlining Act of 1994, have you seen the Government contracting activities you do business with being more proactive towards the use of TINA Waivers?
3. In cases where waivers have been applied, what benefits has your organization/department realized as a result of waiver use? How have these benefits enhanced your capabilities to perform the service/products you provide?

4. If quantifiable savings (i.e. time or cost) were associated with using a waiver, could you offer a range of savings that you realized? How have these savings facilitated the conduct of business with the Government? If these savings were not institutionalized, could you offer your opinion on the savings that were found?

5. Does your company work actively with the Government on promoting the use of waivers where an obvious potential exists for their use? Have there been any cases in which your organization recommended using a waiver and the Government did not pursue the recommendation? If so, could you briefly describe the scenario?

6. Understanding the need for the Government to be able to determine price reasonableness, what price or cost analysis tools or programs, if any, has your organization offered to facilitate the abilities of the Government in doing so? Have these tools or programs been actively used or sought by the Government?

7. In general, what do you feel your company's overall opinion of TINA Waivers is?

8. What Government related procurement scenarios within your organization do you feel offer a viable use of a TINA Waiver? How do you feel the Government can protect its interests in these scenarios regarding determination of price reasonableness?

9. What commercial procurement practices does your company employ with other buyers that you feel could be easily adopted to Government procurements which would negate the need for certified cost and pricing data submittals?

10. What additional comments or suggestions can you offer regarding waiving the requirement for certified cost and pricing data submission in Government procurements?



## APPENDIX C. NAVAIRSYSCOM PPM #170

4200  
AIR-2.1.1.1  
28 May 98

AIR-2.0 POLICY & PROCEDURES MEMORANDUM # 170

Subj: AUTHORITY TO WAIVE SUBMISSION OF CERTIFIED COST OR PRICING DATA, AND TO OBTAIN COST OR PRICING DATA FOR CONTRACTING ACTIONS BELOW REGULATORY THRESHOLDS

Ref: (a) FAR 15.403

Encl: (1) Sample Request for Waiver (without enclosures)  
(2) Endorsement Page  
(3) Sample Waiver  
(4) Sample Determination and Finding (D&F) to Obtain Cost or Pricing Data Below Regulatory Thresholds

1. Purpose. This PPM provides guidance, in accordance with reference (a), for requesting a waiver from the Truth in Negotiations Act (TINA) requirement for submission of certified cost or pricing data. It also provides procedures for requesting authority to obtain certified cost or pricing data for acquisitions below regulatory thresholds but over the simplified acquisition threshold.

2. Policy. For any action where another exception to the requirements of reference (a) does not apply, but the contracting officer is able to determine that the estimated cost or price is fair and reasonable without requiring the submission of certified cost or pricing data, a waiver in accordance with reference (a) shall be considered. In addition, certified cost or pricing data for acquisitions under regulatory thresholds but over the simplified acquisition threshold may not be obtained unless the Head of the Contracting Activity (HCA) justifies the requirement in accordance with reference (a).

### 3. Procedures.

a. Waiver Criteria. The following general criteria should be applied in deciding the appropriateness of seeking a waiver:

Subj: AUTHORITY TO WAIVE SUBMISSION OF CERTIFIED COST OR PRICING DATA, AND TO OBTAIN COST OR PRICING DATA FOR CONTRACTING ACTIONS BELOW REGULATORY THRESHOLDS

(1) AIR-2.0 shall be notified, as early as is practical, in a procurement when use of a waiver is being contemplated.

(2) Waivers shall be approved prior to reaching any agreements with contractors.

(3) Waivers are justified only in those situations where adequate reliable information exists, with a particular focus on actual cost history, to determine a fair and reasonable price. System/equipment configuration should be reasonably stable to allow projection from actual verifiable costs, not negotiated numbers, from recently completed contractual efforts.

(4) Contractors should have approved purchasing, estimating and accounting systems. Additionally, these systems should be reasonably free of minor deficiencies impacting the program in question. Finally, the contractor's business unit shall be reasonably free of defective pricing actions on the program seeking the waiver.

(5) Contracting Officers should determine whether there are any ongoing program or pertinent corporate investigations and review their status to ensure complete reliability of data to be utilized in lieu of cost or pricing data. If there is any question, consult with counsel.

(6) If proposed prices are greater than that for any prior contract for the same items, the basis of the increases must be clearly justifiable from data other than certified cost or pricing data.

(7) Caution shall be exercised relative to consecutive waivers. Generally, a waiver every other acquisition is considered more prudent as it permits periodic review of certified data to validate the analysis used where a waiver was approved. However, two consecutive waivers may be appropriate if the contracting officer has solid insight into recent actual costs and trends. More than two consecutive waivers should normally not be requested unless unusual circumstances provide support for such an action.

Subj: AUTHORITY TO WAIVE SUBMISSION OF CERTIFIED COST OR PRICING DATA, AND TO OBTAIN COST OR PRICING DATA FOR CONTRACTING ACTIONS BELOW REGULATORY THRESHOLDS

(8) Since many prime contractors are integrators, waivers for high-dollar subcontracts should also be considered if other data are deemed to provide an adequate basis for projecting a fair and reasonable price or cost. When a waiver is being processed for the prime contractor, in order to waive TINA requirements for subcontracts over regulatory thresholds, the waiver must specifically include those subcontractors. (If numerous, identify subcontractors to which the waiver applies on a waiver attachment).

(9) When deciding whether to seek a waiver of certified cost or pricing data for high dollar subcontractors, the same criteria as stated above should be considered. If it is considered inappropriate to waive certified cost or pricing data for high-

dollar subcontractors, such as in cases where high-dollar subcontractors have had pricing problems (i.e., cost growth, significant estimating system deficiencies, or numerous defective pricing instances), the waiver should be only for the prime contractor's effort.

b. A proposed waiver shall be requested in a memo that details the basis for determining that the price is fair and reasonable. Supporting documents should be included only if necessary to illustrate a point. Enclosures (1), (2) and (3) provide examples of a request, an endorsement page, and a waiver. (Samples are illustrative only; the circumstances of each individual waiver request will be unique.)

c. Authority to require certified cost or pricing data below regulatory thresholds will be obtained via a brief memo accompanied by a Determination and Findings (D&F) to be signed by AIR-00. A sample D&F is provided as enclosure (4).

d. Both requests described in 3.b. and 3.c. above shall be routed for concurrence to the contracting officer (if prepared by the contract specialist), counsel, division head, department head, and will be signed by the Assistant Commander for Contracts or Deputy (AIR-2.0 or AIR-2.0A). In addition, requests under 3.b. above shall contain an endorsement page which also reflects the concurrence of AIR-4.2 Cost Analysis Department and the cognizant program manager/program executive officer (see enclosure 2).

Subj: AUTHORITY TO WAIVE SUBMISSION OF CERTIFIED COST OR  
PRICING DATA, AND TO OBTAIN COST OR PRICING DATA FOR  
CONTRACTING ACTIONS BELOW REGULATORY THRESHOLDS

NAWCAD/TSD and NAWCWD requests will be forwarded via AIR-2.5 and AIR-2.4, respectively. After signature of the forwarding memorandum by AIR-2.0 or AIR-2.0A, all requests will be forwarded under cover of an Outgoing Mail Record form (NAVAIR Form 5216/13). Clearance ladder block on the Outgoing Mail Record form should include: AIR-2.0 or AIR-2.0A, AIR-7.7, AIR-00EA2, AIR-00EA, AIR-09, and, finally, AIR-00 for signature.

/s/ R. E. COWLEY

Distribution:  
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Division Heads  
Contracting Officers

DEPARTMENT OF THE NAVY  
NAVAL AIR SYSTEMS COMMAND  
47123 BUSE ROAD, UNIT #IPT  
PATUXENT RIVER, MD 20670-1547

IN REPLY REFER TO

4200  
Ser AIR-

2.0/97-071

(Date)

MEMORANDUM

From: Assistant Commander for Contracts (AIR-2.0)  
To: Commander, Naval Air Systems Command (AIR-00)  
Subj: REQUEST TO WAIVE REQUIREMENT FOR SUBMISSION OF  
CONTRACTOR CERTIFIED COST OR PRICING DATA FOR THE FY  
97, LOT 20 PROCUREMENT OF CH-53E HELICOPTERS  
Ref: (a) FAR 15-403-1(b)  
Encl: (1) Negotiated Unit Prices FY 92 through FY 96  
(2) Cumulative Average Theory Applied to Material  
(3) FY 94 (Lot 17) Actuals  
(4) DCMC Sikorsky Approval Letter of Waiver  
(5) Waiver from Submission of Contractor Certified  
Cost or Pricing Data

1. Reference (a), which implements 10 U.S.C.2306a(b)(1)(B), provides that the head of the contracting activity may waive the requirement for submission of contractor certified cost or pricing data under exceptional circumstances. The Federal Acquisition Streamlining Act of 1994 encourages a broad definition of "exceptional circumstances," including a situation where Certified Cost and Pricing data furnished under previous production buys, used in conjunction with updated information, is sufficient to determine fair and reasonable prices.

2. The FY 97 (Lot 20) procurement of CH-53E helicopters is an excellent candidate for a waiver of cost and pricing data. The CH-53E helicopter is a shipboard compatible, heavy lift, transport helicopter. The CH-53E has been in production since 1978 with 174 aircraft delivered to date. Thus there is extensive cost history on the program for determining fair and reasonable prices.

Subj: REQUEST TO WAIVE REQUIREMENT FOR SUBMISSION OF  
CONTRACTOR CERTIFIED COST OR PRICING DATA FOR THE FY  
1997, LOT 20 PROCUREMENT OF CH-53E HELICOPTERS

3. Due to funding uncertainties, the program office was unable to initiate procurement action for the FY 97 helicopter requirement until now. Waiting for the contractor to prepare a full cost proposal for two additional helicopters and performing the necessary audits/cost analysis will exacerbate the delay.
4. Sikorsky submitted a proposal dated 28 February 1997 for the FY 97 (Lot 20) production buy of two CH-53E helicopters with a unit price of \$22,750,000. This proposed unit price represents a less than four percent increase over the FY 96 (Lot 19) unit price. The contractor developed the unit price based on historical data from FY 94 (Lot 17) and price analysis using the "PRICE Hardware Model." The negotiated settlement price for FY 94 (Lot 17) production buy was fully audited by DPRO/DCAA and supported by certified cost and pricing data. FY 95 and FY 96 (Lots 18 and 19) were both negotiated using price analysis based on FY 93 and FY 94 (Lots 16 and 17) and were supported by Certificates of Current Cost and Pricing. Having had nineteen earlier production lot buys, Sikorsky's learning curve has now leveled off and a proposed increase of less than four percent over the previous fiscal year is seen as extremely favorable and reasonable.
5. The proposed Lot 20 price was examined from two different perspectives. The first analysis was based on pure price analysis using past lot prices. Using the negotiated FY 92 (Lot 15) through FY 96 (Lot 19), and FY 97 (Lot 20) proposed unit prices, AIR 4.2 indices were used to convert them to 1998 dollars and a comparison of these prices is shown in enclosure (1). Using only this superficial comparison, the total proposed price for two helicopters still equates to a less than one percent increase over the FY 96 buy (escalated to constant FY 98 dollars).
6. Enclosure (2) shows the effects of the significant change in quantity of aircraft to the material dollars. A reduction from twelve aircraft to two aircraft increased the material dollars by over one million constant FY 98 dollars.
7. In addition to price analysis, the proposed price was further substantiated by looking at FY 94 (Lot 17) audited actuals and applying appropriate adjustments to certain cost

Subj: REQUEST TO WAIVE REQUIREMENT FOR SUBMISSION OF  
CONTRACTOR CERTIFIED COST OR PRICING DATA FOR THE FY  
1997, LOT 20 PROCUREMENT OF CH-53E HELICOPTERS

elements. Enclosure (3) shows the escalation of the FY 94 actuals to constant FY 98 dollars with current overheads and the application of a fixed percentage for sustaining engineering.

8. When examining the analysis it is important to note that the FY 94 (Lot 17) original proposal and audit were based on a requirement for sixteen aircraft, however the Navy reduced the requirement to only twelve aircraft, and an advanced acquisition contract was signed in April 1993. Despite the substantial reduction in the requirement, the contractor agreed to enter into negotiations based on this original proposal. On May 6, 1994 a negotiated definitization settlement of \$19,639,919 per unit was achieved for each of the twelve aircraft in Lot 17.

9. Less than 6 months later the FY 95 (Lot 18) per unit price of \$19,900,000 for two aircraft was agreed to. The negotiation for the two additional FY 95 aircraft was supported under the umbrella of the FY 94 (Lot 17) original proposal and audit. Due to the short period of time elapsed since the FY 94 buy, the contractor was able to achieve some economy by exercising vendor options under Lot 17 and by adding the two additional aircraft to the end of Lot 17 production run.

10. The FY 96 (Lot 19) two aircraft lot had a negotiated price of \$21,900,000 per aircraft. The Lot 17 proposal and audit were again used as a basis for the negotiation along with DRI escalated actuals from completed Lot 16 aircraft. The contractor re-certified his Lot 17 proposal along with the additional actuals and other data provided in support of the negotiation. The more substantial increase in price for Lot 19 was found to be a result of the substantial drop in aircraft- quantity (from fourteen to two) and from the longer production stretch-out (approximately six months). The contractor was unable to tack the production of the two additional aircraft onto the end of the Lot 17/18 production runs. Therefore, he was unable to achieve any significant quantity savings on material purchases.

11. The FY 97 (Lot 20) buy will be similar to Lot 19 in that it will be for only two aircraft and it will be essentially a "stand-alone" run with some inevitable break or pause in production. Despite this fact, in light of the

Subj: REQUEST TO WAIVE REQUIREMENT FOR SUBMISSION OF  
CONTRACTOR CERTIFIED COST OR PRICING DATA FOR THE FY  
1997, LOT 20 PROCUREMENT OF CH-53E HELICOPTERS

long cost and pricing history on this program we believe there is sufficient data to arrive at a reasonable price. Waiving the submission of the certified cost or pricing data for modification to CH-53E contract N00019-93-C-0053 will significantly reduce administrative costs associated with proposal preparation and the negotiation process for the Government, as well as the contractor.

11. It should be noted that this request for a waiver is not based on a refusal of the contractor to provide certified cost or pricing data. The resident DCMC office has provided enclosure (4), a signed letter acknowledging their review and approval of the subject waiver.

13. Based upon the above analysis, the price can be determined to be fair and reasonable without submission of certified cost or pricing data. Therefore, waiver from submission of certified cost or pricing data for this procurement makes good business sense. Your approval signature is requested on the waiver provided as enclosure (5). Pricing for future CH-53E procurements will be reviewed on a case by case basis and the need for cost and pricing data assessed.

14. If there are any questions or concerns, please contact (type name of cognizant PCO) at (type telephone number), or the undersigned.

(signed by AIR-2.0 or 2.0A)



I have reviewed this waiver in addition to the attached justification relating to the FY97 CH-53E helicopter and believe an adequate basis exists for determining a fair and reasonable price without requiring the submission of certified cost or pricing data from the contractor.

CONTRACTING OFFICER:

(Typed name of PCO) Date	Code	Telephone
-----------------------------	------	-----------

LEGAL REVIEW:

(Typed name of legal counsel) Date	Code	Telephone
---------------------------------------	------	-----------

AIR-4.2 COST ANALYSIS DEPARTMENT:

(Typed name of AIR-4.2 reviewer) Date	Code	Telephone
--	------	-----------

HEAD, (TYPED NAME OF 2.0 DEPARTMENT):

(Typed name of department head) Date	Code	Telephone
---	------	-----------

PROGRAM MANAGER, (TYPED NAME OF PROGRAM):

(Typed name of program manager) Date	Code	Telephone
---	------	-----------

PROGRAM EXECUTIVE OFFICER, (TYPED NAME OF PEO ORGANIZATION):

(Typed name of PEO) Date	Code	Telephone
-----------------------------	------	-----------

DEPARTMENT OF THE NAVY  
Authority to Waive Submission of  
Certified Cost or Pricing Data

1. The Naval Air Systems Command proposes to award a firm fixed price modification to contract N00019-93-C-0053 for the FY 97 procurement of two (2) CH-53E helicopters as follows:

FY 97 CH53E HELICOPTER

ITEM	UNIT PRICE	QTY	PRICE
CH-53E helicopter	\$22,750,000	2	\$45,500,000

2. Under FAR 15-403-4(a)(1) and 15.406-2, Sikorsky Aircraft Corporation is required to submit certified cost and pricing data prior to award of a contract for the items listed in paragraph 1. above. However, I am waiving the certification requirements for the following reasons:

(a) Extensive historical cost and pricing data exist upon which reasonable prices can be established,

(b) The end item is in mature production, and .

(c) Significant administrative costs and time will be saved by the Government and the Contractor.

3. I hereby make this waiver under the authority of 10 U.S.C. 2306a(b)(1)(B), as implemented by FAR 15.403-1(c)(4).

---

(Typed name of AIR-00)  
COMMANDER  
NAVAL AIR SYSTEMS COMMAND

DATE

NAVAL AIR SYSTEMS COMMAND  
NAVAL AIR SYSTEMS COMMAND HEADQUARTERS  
47123 BUSE ROAD, UNIT # IPT  
PATUXENT RIVER, MD 20670-1547

DETERMINATION AND FINDINGS

Authority to Require Cost or Pricing Data  
Under \$500,000

Upon the basis of the following findings, pursuant to the authority of Title 10 U.S.C. Section 2306a.(c)(1), as implemented in FAR 15.403-4(a)(2), it is hereby determined that cost or pricing data under the \$500,000 threshold may be required for the proposed contract action.

FINDINGS

I. The Naval Air Systems Command proposes to award a (insert contract type) contract for the FYXX procurement of (insert description of requirement) at an estimated amount of \$ (insert estimate).

2. Certified cost or pricing data are necessary to determine whether the price is fair and reasonable because (MUST state reasons why contractor certified cost or pricing data are necessary for NAVAIR to evaluate the reasonableness of the proposed price).

DETERMINATION

Based on the foregoing, cost or pricing data are required under the proposed contract action in order to determine the price is fair and reasonable.

\_\_\_\_\_  
(Typed name of AIR-00)

DATE

COMMANDER

NAVAL AIR SYSTEMS COMMAND



## LIST OF REFERENCES

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14. Captain Douglas J. Mrak.....2  
41 South Whittier Street  
Carteret, NJ 07008